



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Second day of November Two Thousand and Twenty One
PRESENT

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
AND

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.O.P. (MD) No.9104 of 2020

Maylammal .. Petitioner/Accused No.10

-vs-

State rep. by its
The Inspector of Police,
Uthamapalayam Police Station,
Theni District.
(Crime No.147 of 2020).

.. Respondent/Complainant

For Appellant : Mr.D.Selvam, Advocate
for M/s.R.A.Shinusha, Advocate

For Respondent : Mr.S.Ravi
Additional Public Prosecutor
& Amicus Curiae

Amicus Curiae : Mr.K.K.Ramakrishnan, Advocate

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

PRAYER:

Criminal Original Petition filed under Section 438 of the Code of Criminal Procedure, praying to enlarge the petitioner on bail in the event of arrest by the respondent police in Crime No.147 of 2020 on the file of the Uthamapalayam Police Station, Theni.

ORDER : The Court Made the following order :-

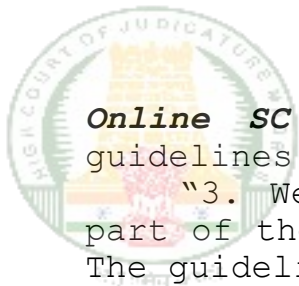
(Order of the Court was delivered by V.BHARATHIDASAN, J.)

The matter has been placed before us, based on an reference made by one of us (V.BHARATHIDASAN, J) to issue an authoritative pronouncement regarding issuing summons and warrants by the trial Court to the absconding accused and also to frame appropriate guidelines in this regard.

2.Earlier we have appointed Mr.S.Ravi, learned Additional Public Prosecutor, and Mr.K.K.Ramakrishnan, learned counsel as Amicus Curiae, to assist the Court. Both learned counsel make elaborate submissions taking us to various provisions of the Code of Criminal Procedure, 1973, and a number of judgments of this Court as well as the Hon'ble Supreme Court on this issue.

3.However, recently, the Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation & Another [2021 SCC**

<https://hcservices.ecourts.gov.in/hcservices/>



Online SC 922], considered the issue in reference, and issued guidelines elaborately in this regard, which reads as follows:

"3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the Courts below. The guidelines are as under:

"Categories/Types of Offences"

- A) Offences punishable with imprisonment of 7 years or less not falling in category B & D.
- B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.
- C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 212(6), etc.
- D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

- 1) Not arrested during investigation.
- 2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.
(No need to forward such an accused along with the chargesheet (Siddharth v. State of UP, 2021 SCC OnLine SC 615)

CATEGORY A

After filing of chargesheet/complaint taking of cognizance

- a) Ordinary summons at the 1 instance/including permitting appearance through Lawyer.
- b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.
- c) NBW on failure to failure to appear despite issuance of Bailable Warrant.
- d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.
- e) Bail applications of such accused on appearance may be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORY B/D

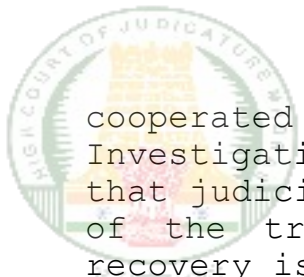
4. On appearance of the accused in Court pursuant to process issued bail application to be decided on merits.

CATEGORY C

5. Same as Category B & D with the additional condition of compliance of the provisions of Bail under NDPS S. 37, 45 PMLA, 212 (6) Companies Act 43 d(5) of UAPA, POCSO etc."

6. Needless to say that the category A deals with both police cases and complaint cases.

7. The trial Courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by learned ASG is that where the accused have not



cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons when the Court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

8. We may also notice an aspect submitted by Mr. Luthra that while issuing notice to consider bail, the trial Court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.

9. The suggestions of learned ASG which we have adopted have categorized a separate set of offences as "economic Offences" not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in **Sanjay Chandra v. CBI**, (2012) 1 SCC 40 has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:

- a) seriousness of the charge and
- b) severity of punishment.

10. Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor."

The Hon'ble Supreme Court directed that, the above judgment to be circulated to the High Courts, in turn to be circulated to the trial Courts.

4. Since the Hon'ble Supreme Court has issued detailed guidelines in the issue under reference, we are of the view that no further order is necessary in this reference. The trial Courts are directed to strictly comply with the above guidelines while issuing summons and warrants in future.

5. Accordingly, the reference is answered.

sd/-

02/11/2021

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



TO

1 THE JUDICIAL MAGISTRATE,
UTHAMAPALAYAM.

2 DO THROUGH: THE CHIEF JUDICIAL MAGISTRATE,
THENI.

3 THE INSPECTOR OF POLICE,
UTHAMAPALAYAM POLICE STATION, THENI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE REGISTRAR(JUDICIAL) ,
MAURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL OP(MD) No.9104 of 2020

Date :02/11/2021

PKP/PN/SAR-1/10.11.2021/4P/6C