

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.02.2021

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THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.Nos.3600 and 3623 of 2021
and
Crl.MP.No.2141 of 2021

Uvarikalai ..Petitioner in both the petitions/Accused 2
Vs.

The Inspector of Police,
G-7, Achirupakkam Police Station,
Kancheepuram District.
Crime No.114 of 2019

.. Respondents in both the petitions

Prayer in Crl.OP.No.3600 of 2021: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 12.02.2021 passed in Crl.MP.No.653 of 2021 in C.C.No.71 of 2020 on the file of the learned Judicial Magistrate, Madurantagam, Kancheepuram and remanded the petitioner to the judicial custody and now confined at Sub Jail, Maduranthagam, made by the learned Judicial Magistrate at Madurantagam, Kancheepuram District.

Prayer in Crl.OP.No.3623 of 2021: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to transfer the C.C.No.71 of 2020 from the file of Learned Judicial Magistrate, Madurantagam, Kancheepuram District to the Learned Judicial Magistrate No.1, Chengalpet.

For Petitioner : M/s.Vimal B.Crimson (in both the petitions)

For Respondent : Mr.Mohamed Riyaz,
Additional Public Prosecutor
(in both the petitions)

COMMON ORDER

The issues involved in both the cases are interconnected and hence, both the cases are taken up for hearing together, heard and disposed of through this common order.

2. The petitioner is facing trial before the Court below for the offences under Section 428, 429 of IPC and Sections 11(1),

(a), (b), (d) & (e) of Prevention of Cruelty of Animals Act, 1960. There are five accused persons in this case and the petitioner has been arrayed as second accused (A2).

3. It is seen from the records that the Hon'ble Supreme Court, while disposing of the appeal in CrI.A.No.230 of 2020, by an order dated 05.02.2020, directed the trial Court to conclude the proceedings as early as possible and preferably within six months. Due to the intervening pandemic situation, the trial Court was not able to take up the case for hearing and consequently, the period fixed by the Hon'ble Supreme Court for completion of the trial has already elapsed.

4. The trial Court framed the charges on 23.12.2020 and thereafter, posted the case for examination of the witnesses. PW1 and PW2 were examined in chief and they have also been cross examined on the side of the petitioner.

5. When the matter came up for hearing on 29.12.2020, the petitioner had filed an application under Section 317 of Cr.P.C. to dispense with his appearance citing health reasons. This application came to be dismissed by the Court below and a Non-Bailable Warrant was issued against the petitioner and the matter was posted for hearing on 05.01.2021.

6. The petitioner, aggrieved by the same, filed an anticipatory bail petition before this Court in CrI.OP.No.1056 of 2021. This Court, by an order dated 27.01.2021, directed the petitioner to approach the trial Court and file an application for recalling the Non-Bailable Warrant and also directed the trial Court to pass orders on the same day.

7. Pursuant to the above orders, the petitioner filed the recall petition under Section 70(2) of Cr.P.C. on 12.02.2021. The trial Court passed an order on 12.02.2021 dismissing the recall petition and consequently, the petitioner was remanded to judicial custody. Aggrieved by the same, the present petition has been filed before this Court.

8. The petitioner has also filed a petition seeking for transfer of the case from the Principal District and Sessions Court, Chengalpat to some other Court in Madurantagam. This petition has been filed on the apprehension that the trial Court is prejudiced against the petitioner.

9. Heard Mr.Vimal B.Crimson, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor for the respondent.

10. The learned counsel for the petitioner submitted that till date, three witnesses have been examined on the side of the prosecution and except PW3, the other two witnesses have already been cross examined by the petitioner. The learned counsel further submitted that the petitioner has already changed his counsel and is willing to recall PW3 for cross examination immediately and also cross examine all the other witnesses examined on the side of the prosecution, on the same day they are examined in chief. The learned counsel further submitted that it was not a case of jumping bail and the petitioner was not able to be present before the Court below on 29.12.2020 due to health reasons and there was no reason for the Court below to take an extreme step of dismissing the application to recall the Non-Bailable Warrant and remand the petitioner to judicial custody. The learned counsel submitted that considering the nature of the offence that is involved in the present case, there was no occasion for the Court below to come to a conclusion that the petitioner is evading from proceeding further to cross examine the witnesses.

11. Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent submitted that the Hon'ble Supreme Court has already fixed a time limit for the completion of trial on a day-to-day basis. If the petitioner does not co-operate for the completion of the trial within the time frame, the Court below has no other alternative except to remand the petitioner to judicial custody and ensure his presence at the time of every hearing and complete the case at the earliest possible time. The learned Additional Public Prosecutor, in order to substantiate his submissions, also relied upon the judgment of the Hon'ble Supreme Court in STATE OF UTTAR PRADESH VS. SHAMBHU NATH SINGH (JT 2001 (4) SC 3191).

12. This Court has carefully considered the submissions made on either side and perused the materials available on record.

13. In the considered view of this Court, the petitioner was absent only on one day i.e. on 29.12.2020 due to some illness and an application was also filed on his behalf under Section 317 of Cr.P.C. to dispense with his appearance on that day. The Court below, in its anxiety to comply with the directions issued by the Hon'ble Supreme Court, has thought it fit to remand the petitioner to judicial custody to ensure that the petitioner will be present during every date of hearing and the case can also be completed at the earliest possible time.

14. It is brought to the notice of this Court that there are totally about seven witnesses who are going to be examined on the side of the prosecution and out of the same, PW1 to PW3 have already been examined and summons have been issued to the other witnesses and the case is said to be posted for examination of those witnesses today. Out of the prosecution witnesses who have been examined till today, except PW3, the other two witnesses have been cross examined by the petitioner. The petitioner gives an assurance that he will immediately file a petition to recall PW3 for cross examination and he will also cross examine all the other witnesses examined on the side of the prosecution, on the same day they are examined in chief.

15. Taking into consideration the facts and circumstances of the case and also the nature of offence for which the petitioner is undergoing trial before the Court below and also after considering the undertaking given by the petitioner, this Court is inclined to interfere with the order passed by the Court below in CMP.No.653 of 2021 dated 12.02.2021. The said order is hereby set aside.

16. This Court is not inclined to transfer the proceedings at this stage merely based on some apprehension raised by the petitioner and it will be more appropriate if the proceedings are continued before the same Court and the trial is conducted on a day-to-day basis and the case is completed within a short time.

17. In the result, CrI.OP.No.3600 of 2021 is allowed with the following directions:

a. The petitioner shall be immediately enlarged on bail subject to the condition that the petitioner executes a bond for a sum of Rs.5,000/- (Rupees Five thousand only) with one surety for a like sum to the satisfaction of the learned Judicial Magistrate, Maduranthagam in C.C.No.71 of 2020;

b. the petitioner shall immediately file an application for recalling PW3 and other witnesses examined in chief today for cross examination and the said application shall be allowed by the Court below and these witnesses shall be cross examined on the same day when they are present before the Court below;

c. the petitioner shall cross examine all the other witnesses examined on the side of the prosecution, on the same day, when they are examined in chief.;

d. the petitioner shall be present during every date of hearing before the Court below without fail;

e. the Court below shall conduct the trial on a day-to-day basis and shall complete the proceedings within a period of one month from the date of receipt of a copy of this order. Even though the Hon'ble Supreme Court had fixed a time frame for

completion of the proceedings within six months, the compliance of the same became an impossibility due to the intervening pandemic situation. Therefore, this Court is fixing an outer time limit of one month by virtue of this order; and

f. if the petitioner does not comply with any of the conditions imposed by this Court and attempts to delay the completion of the trial, the Court below is entitled to cancel the bond and remand the petitioner to judicial custody without any further reference to this Court.

18. For the reasons stated herein above, the Criminal Original Petition in Crl.OP.No.3623 of 2021 is dismissed. consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate, Madurantagam,
2. The Inspector of Police,
G-7, Achirupakkam Police Station,
Kancheepuram District.
3. The Sub Jail, Madurantagam
4. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr. Vimal B. Crimson, Advocate sr 10619.

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CA(CO)
SP(24/02/2021)

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