

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.No.10356 of 2021

Musthafa @ Muhammed Gigath Musthafa

... Petitioner

Vs.

State by Inspector of Police,
Rasipuram Police Station,
Rasipuram, Namakkal District.
(Crime No.469 of 2016)

... Respondent

Prayer:

Petition filed under Section 439 of Cr.P.C., seeking to enlarge the petitioner on bail in connection with S.C.No.39 of 2017, pending trial on the file of Assistant Sessions Judge, Rasipuram.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.A.Gopinath
Government Advocate (CrI. Side)

ORDER

The petitioner who was remanded to judicial custody on 16.09.2019 for the offence under Section 392 r/w. 397 IPC in Cr.No.469 of 2016 on the file of the respondent police, seeks bail.

2.It is the case of the prosecution that the petitioner was implicated for the offence under Section 392 r/w. 397 of I.P.C. Subsequently, the petitioner was enlarged on default bail. When the case was posted for hearing he did not appear before the Court. Accordingly, the lower Court issued Non Bailable Warrant against the petitioner for his non appearance and he was secured on 16.09.2019.

3.The learned counsel appearing for the petitioner submitted that already the petitioner was enlarged on default bail by the concerned lower Court, however, his non appearance before the lower Court is neither willful nor wanton, due to ill health, he was unable to appear before the lower Court. Hence, Non Bailable Warrant was issued against the petitioner. He further submitted that the petitioner is languishing in jail for more than 1 - ½ years.

4.The learned Government Advocate (Crl. Side) submitted that there are five previous cases pending against the petitioner and vehemently opposed for grant of bail to the petitioner.

5.Considering the period of incarceration undergone by the petitioner, I am inclined to grant bail to the petitioner.

6.Accordingly, the petitioner is ordered to be released on bail on the following conditions:

(a) the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) before the Superintendent of Central Prison, Salem, in which the petitioner is confined and on such execution the petitioner shall be released from prison;

(b) within a period of four weeks after the release, the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties, each for a like sum to the satisfaction of the learned Assistant Sessions Judge, Rasipuram;

(c) in case of any difficulty in executing the said bond along with the sureties before the concerned Magistrate within the time stipulated above, the petitioner is permitted to file appropriate petition within a period of four weeks therefrom before the concerned Magistrate for extension of time for executing the bond along with sureties and if any such application is filed, the concerned Magistrate shall decide on the grant of extension of time for accepting the bond and sureties in accordance with law. Failing filing of any such application within the time prescribed above, the bail granted by this Court would stand automatically vacated;

(d)the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(e)the petitioner shall report before the learned Assistant Sessions Judge, Rasipuram after lockdown, on each and every date of hearing at 10.30 a.m. during trial;

(f)the petitioner shall not tamper with evidence or witness either during investigation or trial;

(g)the petitioner shall not abscond either during investigation or trial;

(h)on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]**; and;

(i)if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

-sd/-
16/06/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE ASSISTNT SESSIONS JUDGE,
RASIPURAM.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
RASIPURAM POLICE STATION,
RASIPURAM,
NAMAKKAL DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

CC to M/S R.SANKARASUBBU Advocate on payment of necessary charges

CRL OP.10356/2021

Date :16/06/2021

TA-17/06/2021

WEB COPY