

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
21.06.2021	23.06.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.10663 OF 2021

Dhanasekaran

.. Petitioner

- Vs -

The State, rep. by
Inspector of Police
Ammamet Police Station
Salem District.

.. Respondent

Criminal Original Petition filed u/s 439 Cr.P.C. praying this Court to enlarge the petitioner on bail in connection with S.C. No.270 of 2009 pending trial on the file of the Court of Special Judge for EC/NDPS Act Cases, Salem.

For Petitioner : Mr. R.Sankarasubbu

For Respondent : Mr. A.Gopinath, GA (Crl. Side)

ORDER

The present petition has been filed by the petitioner to enlarge him on bail in connection with the case in S.C. No.270/2009 on the ground that the period of incarceration of the petitioner for more than 576 days is in violation of Article 21 of the Constitution.

2. It is the case of the prosecution that the criminal machinery was set in motion by registration of FIR based on the complaint of one Thamaraiselvi, who alleged that the petitioner along with two other accused, attacked her husband Selvam and murdered him, which act was in furtherance of a criminal conspiracy hatched between the petitioner and the other accused. Pursuant to the complaint and registration of the case, the respondent apprehended and arrested the petitioner and remanded him to judicial custody.

3. Initially bail was granted to the petitioner, but due to the default of the petitioner on 30.7.2019 to appear before the court in pursuant to the condition imposed, NBW was issued for securing the petitioner/accused and, accordingly, the NBW was executed on 8.11.2019. In furtherance to the said arrest, seeking bail once again, the petitioner moved C.M.P. No.383/2021 before the trial court, which dismissed the said petition and aggrieved by the said dismissal, the petitioner is before this Court by filing the present petition.

4. Learned counsel appearing for the petitioner submits that initially bail was granted to the petitioner and the petitioner has been strictly adhering to the conditions imposed therein. However, due to medical incapacitation, the petitioner was unable to attend the Court on 30.7.19, which resulted in the issuance of NBW for securing the petitioner and pursuant to the same the petitioner has been secured on 8.11.19 and remanded to judicial custody and the further bail petition by the petitioner has been dismissed by the trial court. It is the vociferous submission of the learned counsel for the petitioner that medical complication in the form of viral fever prevented the petitioner from appearing on 30.7.19, which fact has not been appreciated by the trial court while rejecting bail. It is further submitted that the petitioner has been under incarceration for more than 570 days and non-grant of bail is in violation of Article 21 of the Constitution. It is the further submission of the learned counsel that continued incarceration without granting bail to the petitioner offends Article 21, which has been, time and again, deprecated by this Court and the Hon'ble Apex Court and to highlight the said point, the following decisions have been placed before this Court :-

i) Hussainara Khatoon & Ors. - Vs – Home Secretary, State of Bihar (1980 (1) SCC 81);

ii) Kadra Pahadiya & Ors. - Vs O State of Bihar (1983 SCC (Cri.) 361);

iii) Palanivel – Vs – The State (Madras High Court) (Crl. O.P. No.14320 of 2019 – dated 11.7.2019); and

iv) Raja & Anr. - Vs – State (Madras High Court) (Crl. O.P. No.12933 of 2020 – Date 19.4.2021)

Accordingly, for violation of rights guaranteed under Article 21 and 32 of the Constitution, the learned counsel appearing for the petitioner prayed for grant of bail to the petitioner.

5. Per contra, learned Government Advocate (Crl. Side) appearing for the respondent submitted that the petitioner is a history-sheeted accused and that he has 12 previous cases pending against him all of which pertain to heinous offences committed by the accused. It is the further submission of the learned Government Advocate that the accused/petitioner, though granted bail, however, failed to appear before the Court, which resulted in the issuance of NBW. Though it is the stand of the petitioner/accused that the medical condition in the form of viral fever incapacitated him in appearing before the trial court on 30.7.2019, however, no material whatsoever has been placed before the trial court nor this Court to substantiate the said stand. It is the further submission of

the learned Government Advocate that it is not even the case of the accused/petitioner that he was medically incapacitated to appear before the Court on 30.7.19. It is the further submission of the learned Government Advocate that the mere longevity of the incarceration would not alone be suffice to enlarge the petitioner on bail, more so, his non-appearance after obtaining bail resulting in the issuance of NBW and securing the accused/petitioner had also resulted in the delay in conducting the trial. In such a scenario, the plea of the accused for grant of bail is wholly unsustainable and further the fact that the petitioner is a habitual offender, which is evident from the previous cases pending against the petitioner, this Court shall not show any leniency to the petitioner by granting bail, which would only result in the petitioner indulging in further illegal and heinous acts and, therefore, he objected to grant of bail to the petitioner.

6. This Court paid its anxious consideration to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

7. There is no second opinion that an accused is entitled to speedy trial and any infraction of the same is definitely a violation of Articles 21 and 32 of the Constitution of India. This Court is in respectful agreement with the proposition laid down on this aspect time and again, which has been brought to the notice of this Court through the very many decisions placed by the learned counsel for the petitioner.

8. It is not in dispute that the accused/petitioner has been under incarceration for more than 570 days. It is not as if the petitioner has not been granted bail and, therefore, there is violation of Article 21 of the Constitution. The petitioner had been initially granted bail, but his non-appearance before the Court in pursuant to the condition imposed on him resulted in the issuance of NBW and, thereafter, its execution, leading to the arrest of the accused and remanding him to custody. The NBW was issued on 30.7.19 and executed on 8.11.19. Almost a period of six months passed by for execution of the NBW and it is not clear whether during the said period the petitioner was obeying the conditions imposed by this Court.

9. The stand of the petitioner for his non-appearance on 30.7.19 before the Court is only on account of viral fever, which incapacitated him from fulfilling the conditions imposed on him. In this regard, the order passed by the trial court on the bail petition of the accused subsequent to his remand on execution of NBW reveals that the petitioner has not taken a stand that he was medically incapacitated. Further, even before this Court, though such a stand of medical ailment is taken by the petitioner, however, no material whatsoever to substantiate the said stand is placed. Further, the order of the trial court reveals that the petitioner had suppressed the dismissal of the bail applications by this Court in Crl. O.P. No.4135/2020 vide order dated 25.2.20. Therefore, the suppression of the material fact has also been held against the petitioner to reject his claim for bail.

10. Keeping all the above facts in mind, this Court, when perused the materials placed by the respondent relating to the antecedent of the petitioner, the said history sheet reveals a very sorry state of affairs. The petitioner has almost 12 previous cases pending against him and almost all the graver sections of the Indian Penal Code has been pressed into service against the

petitioner/accused by the law enforcing agency in the previous cases pending against the petitioner. Therefore, from the above previous antecedent of the petitioner, it is unambiguously clear that the petitioner is a habitual offender and indulges in criminal activity as a matter of daily routine. Such being the case, giving the benefit and sympathy to the petitioner, merely on the ground that the petitioner has been under incarceration for more than 570 days and that his continued incarceration is a clear violation of Article 21 of the Constitution are nothing but fabric woven to cover the skeletons that are inside the petitioners closet. The default on the part of the petitioner to comply with the condition and not appearing before the Court and only on execution of the NBW, the petitioner having appeared before the Court below also resulted in delay in the conclusion of the trial and, therefore, the said delay cannot be put against the respondent to enable the petitioner come out on bail.

11. The court below has taken into consideration all the materials particulars, including the dismissal of the earlier petitions by this Court for bail by the petitioner and in the absence of any convincing material explaining the reason for not adhering to the condition has thought it fit to dismiss the petition

for bail filed by the petitioner and this Court finds no reason to take a view any different from the one taken by the trial court.

12. For the reasons aforesaid, this petition filed for bail is devoid of merits and, accordingly, the same is dismissed.

23.06.2021

Index : Yes / No

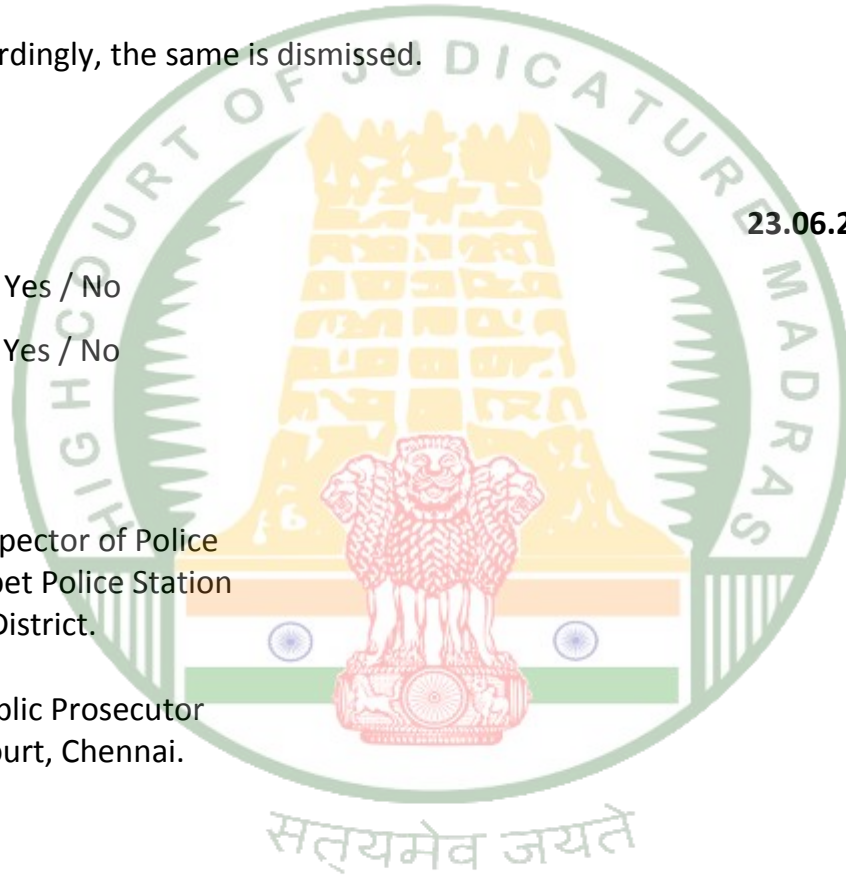
Internet : Yes / No

GLN

To

1. The Inspector of Police
Ammamet Police Station
Salem District.

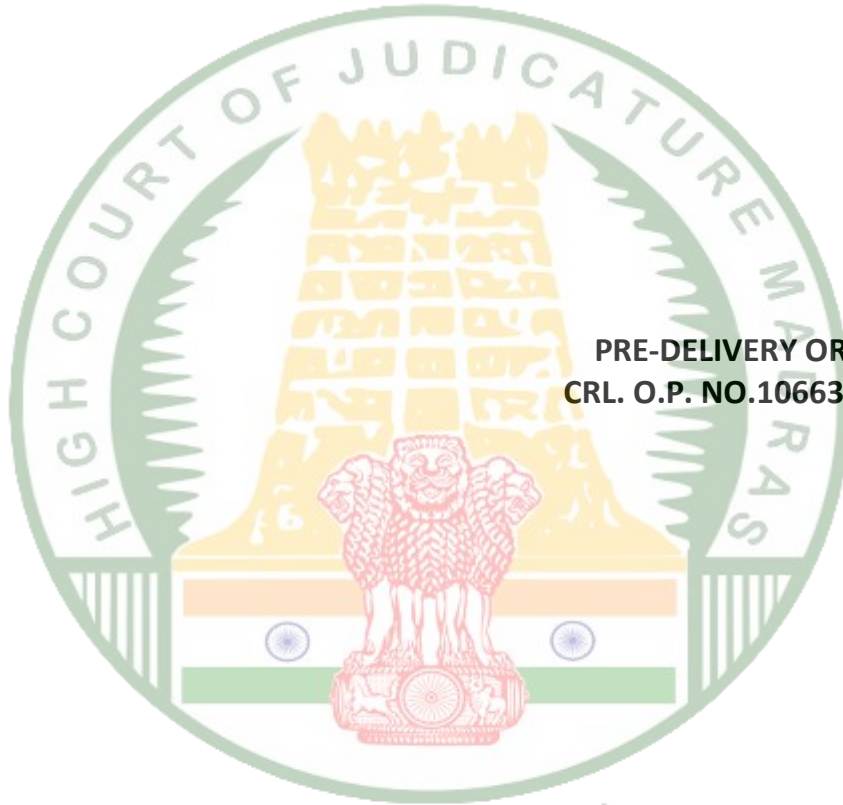
2. The Public Prosecutor
High Court, Chennai.



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M.DHANDAPANI, J.

GLN



**PRE-DELIVERY ORDER IN
CRL. O.P. NO.10663 OF 2021**

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**Pronounced on
23.06.2021**

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