



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Third day of September Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice M.DHANDAPANI

CRIMINAL MISCELLANEOUS PETITION No.9439 of 2021

IN CRL OP.20623/2020

AKBAR ALI

[PETITIONER]

Vs

STATE THROUGH
THE INSPECTOR OF POLICE,
CRIME BRANCH CID,
NAGAPATTINAM UNIT,
NAGAPATTINAM DISTRICT.
CRIME NO.3 OF 2020.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to modify the condition to the petitioner to surrender before the learned Chief Judicial Magistrate Court, Nagapattinam and file an appropriate petition for recalling the non-bailable warrant the Learned Trial Judge shall consider the petition and pass orders on merits on the same day as per orders of this Hon`ble Court in Crl.O.P.No.20623 of 2020 dated 02.03.2021 to the limited extent of without insisting the physical presence of the petitioner for recall/cancel the Non-Bailable warrant and he may be permitted to authorise his counsel to file the petition to recall the Non-Bailable Warrant on his behalf and further orders.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S. R.GANESH KUMAR, Advocate for the petitioner and of M/S. A.GOPINATH, Govt. Advocate (Crl. Side) on behalf of the Respondents the court made the following order:-

This petition has been filed by the petitioner seeking to modify the condition to imposed on the petitioner vide order dt.02.03.2021.

2.The case of the prosecution is that the defacto complainant is the resident of Enangudi, Nagapattinam District and that the petitioner and other accused person are said to have been running a



company in the name and style of "SAM FX & SAMTEAM FX" during the year 2012 and collected huge money from the investor for Online trading and promised to pay a profit of 15% to 50% for every 40 days and collected to the tune of Rs.59,00,000/- which are deposited by the victims to the petitioner company. Since, the amount was not repaid by the petitioners, the Law Enforcing Agency registered the present case U/s. 120(b), r/w 406 and 420 of IPC on the complaint of one Mr.Basheer Ahamed of Nagapattinam.

3.After investigation, final report was filed in C.C.No.37 of 2019 before the Chief Judicial Magistrate, Nagapattinam. Since the petitioner did not appear before the Court regularly, the Trial Court issued a NBW on 21.08.2020. Since, the petitioner was taking treatment for Covid-19 and since he is diabetic patient, he was not able to appear before the court by filing necessary application for and recalling the Non Bailable Warrant issued by the trial Court.

4.However the petitioner filed anticipatory bail application in CrI.O.P.No. 20623 of 2020 and this court vide order dated 02.03.2021, granted anticipatory bail and issued a direction that he should surrender before the Learned Chief Judicial Magistrate Court, Nagapattinam and to file an appropriate petition for recalling the NBW and the learned Trial Judge shall consider the petition and pass orders on merits on the same day.

5. Since the petitioner is not keeping good health and again his health has deteriorated, ultimately he was admitted in "Yogi Vedakumari Hospital" and was diagnosed with health ailments. Hence the Doctor advised not to move further except to the hospital. Thereby the petitioner filed a modification petition before this court that due to ill health, he was not able to comply the conditions as imposed by this court.

6. Learned Counsel, on instructions further submits that the petitioner, on his own volition, will deposit a sum of Rs.10,00,000/-, without prejudice to his rights and contentions within the time stipulated by this court, filing of a recall petition without his physical appearance by authorising his counsel to file the petition to recall the Non-Bailable Warrant may be allowed.

7.Learned Counsel appearing for the petitioner submits that the petitioner is diagnosed for health ailments and he is not able to appear before the trial Court. Hence the petitioner filed the present modification petition before this Court.

8.Learned Counsel further brought to the notice of this court order made in CrI.O.P.No.4514 of 2016, Mr.S.Sundar Vs. State Inspector of Police in which the following directions are passed.



'a) The learned Counsel for the petitioner would submit that without insisting upon the presence of the accused, the court can recall NBW, I hasten to add that the courts can impose conditions, but it should not be harsh or conditions should not be to terrorise the accused. In support of his said view, the learned Counsel would cite the following decisions:

1. VALAMPURI JOHN V.PETER JAMES [1997(2) MWN(CR.)196
2. VALIULLAZ SHERIF V.STATE BY INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, NELLORE [2000(3)MWN28
3. SIRUGUDUGU NAGA VENKATA DURGAKUMARI V.SIRUGUDUGU JHANSILAKSHMI [(2007)2MLJ(Cr1)1668]
4. INDER MOHAN GOWSAMI AND ANOTHER V.STATE OF UTTARANCHAL AND OTHERS[(2007)12SCC 1]

b) Court must protect the rights of the accused. But, at the same time, the court has to see that the offenders are prosecuted. This legal philosophy could be seen as a current judicial thing [SANJAY CHANDRA vs CBI [2012(1)SCC 40] also known as 2G scam case. While striking a balance between these two extremes, cause of justice cannot be compromised. Now the fear of the petitioner is that as and when he shows his fac, there is possibility of he being sent to jail. When he files recall petition, it is an indication that he will participate in the court proceedings. At the same time, there is fear of psychosis on the prosecution that the accused may put bottle necks in the administration of criminal justice. Now the law is very clear. Accused cannot be asked to present in court as a condition precedent to recall the NBW ''.

9.This Court gave its anxious consideration to the submission of the learned Counsel for the petitioner. A perusal of the order in Sundar's case reveals that the Court is clothed with necessary power to pass an order as prayed for. In the case on hand the materials available on record reveals that the decions in Sundar's case applied to the case of the petitioner and therefore, this Court is inclined to issue an affirmative direction as under:

1. Chief Judicial Magistrate, Nagapattinam will entertain the recall petition without insisting upon the presence of the petitioner in the Court.
2. Learned Counsel who appear for the recall petition shall be represent before the learned Judge.
3. The trial Court will decide the recall petition by recalling the NBW issued in earlier occasion.



4. The petitioner is directed to deposit a sum of Rs.10,00,000/- within four weeks. The petitioner is directed to file the recall petition through his Counsel and once, the recall petition is filed, the trial Court shall entertain the Recall petition without insisting upon his presence in the court.

-sd/-

23/09/2021

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 CHIEF JUDICIAL MAGISTRATE
COURT, NAGAPATTINAM

2 THE INSPECTOR OF POLICE,
CRIME BRANCH CID,
NAGAPATTINAM UNIT,
NAGAPATTINAM DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S. R.GANESH KUMAR Advocate on payment of necessary charges SR.No.10500

Order

in
CRL MP.9439/2021

in
CRL OP.20623/2020
Date :23/09/2021

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APN 20/10/2021