



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.19846 of 2021

V.Praveen

... Petitioner

Vs.

State rep. by
The Sub-Inspector of Police,
D3, Team 20 A, CCB,
Vepery, Chennai - 600 007.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order in dated 20.09.2021 in CrI.M.P.No.3842 of 2021 on the file of the Judicial Magistrate Court No.I, Poonamallee at Tiruvallur consequently recall the non-bailable warrant issued against the petitioner/1st accused dated 15.09.2021 in C.C.No.130 of 2021 on the file of the learned Judicial Magistrate Court No.I, Poonamallee at Tiruvallur.

For Petitioner : Mr.M.L.Ramesh

For Respondent : Mr.R.Vinothraja
Government Advocate [CrI.Side]

O R D E R

This Criminal Original Petition is filed to set aside the order in dated 20.09.2021 in CrI.M.P.No.3842 of 2021 on the file of the Judicial Magistrate Court No.I, Poonamallee at Tiruvallur consequently recall the non-bailable warrant issued against the petitioner/1st accused dated 15.09.2021 in C.C.No.130 of 2021 on the file of the learned Judicial Magistrate Court No.I, Poonamallee at Tiruvallur.

2.The petitioner is A1 in C.C.No.130 of 2021 facing trial for offence under Sections 406, 420, 506(i) IPC r/w 120(b) IPC has filed the above said petition.

3.The contention of the petitioner is that during investigation the petitioner was arrested and later let out on

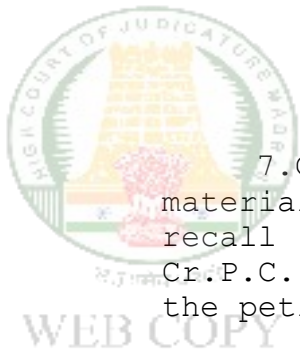


bail, during that time he had furnished sufficient sureties. On completion of investigation charge sheet has been filed on 26.07.2021. Thereafter, summons were issued to the petitioner. All the accused i.e. A1 to A5 in the above said case had appeared on 31.08.2021 and copies were furnished to all the accused. Thereafter, the case was posted to 07.09.2021, for questioning, since there was a boycott by the Advocates throughout Tamil Nadu Subordinate Courts, the case was posted to 15.09.2021. On the aforesaid day the petitioner was not appeared, since he was not feeling well. On his behalf his counsel represented before the trial Court and also filed a petition to dispense with the personal appearance of the petitioner for that hearing along with photocopy of the medical certificate under Section 317 Cr.P.C. The lower Court not entertained the petition and dismissed the same and issued Non-Bailable Warrant against the petitioner.

4.The petitioner filed a petition under Section 70(2) Cr.P.C. along with the medical certificate to recall the warrant. The lower Court not entertained the petition. Further the other accused were also absent on the aforesaid date. For the above said reason the trial court was unable to proceed with the trial and the petitioner never be a cause for the delay. The petitioner is an Engineering graduate and now pursuing the Law course and he is a law abiding person. Only for the reason due to his ill health he is unable to appear before the trial Court and he had filed the recall petition, executed sureties and also executed bond. The trial Court failed to consider the fact that the petitioner had given an undertaking to appear before the trial court for all future hearings and the trial Court erred in dismissing the recall petition. Hence the above petition is filed.

5.The learned Government Advocate [Crl.Side] submits that the petitioner/A1 and the other accused in the above said case were absenting themselves alternatively one after other and not permitting the trial court to frame the charges and proceed with the trial, for that reason the trial Court not entertained the petition filed under Section 317 Cr.P.C. and further dismissed the recall petition filed by the petitioner. Hence, this Criminal Original Petition is liable to be dismissed.

6.The learned counsel appearing for the petitioner further submits that this Court in the case of Dr.Janarthanan Vs. The Inspector of Police in Crl.R.C.(MD).No.617 of 2016, had directed the lower court to entertain the petition filed under Section 70 (2) Cr.P.C. without insisting the presence of the petitioner.



7. Considering the rival submissions and on perusal of materials, this Court directs the trial court to entertain the recall petition filed by the petitioner under Section 70(2) Cr.P.C. and to recall the Non-Bailable Warrant issued against the petitioner.

8. In view of the same, this Criminal Original Petition stands allowed with the above direction.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub-Inspector of Police,
D3, Team 20 A, CCB,
Vepery, Chennai - 600 007.

2. The Public Prosecutor,
High Court,
Madras.

+1CC to Mr.M.L.Ramesh, Advocate, Sr.No.55299

Cr1.O.P.No.19846 of 2021

PA (CO)
K.RK. (26.11.2021)