



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.18605 of 2021

Sharaths.Sharathi

... Petitioner

Versus

1.State Rep By:-

The Inspector of Police,
W-8, All Women Police Station,
Thirumangalam, Chennai.

2.Jayanthi

... Respondents

[2nd respondent is impleaded as per order of this Court, dated 18.11.2021 in Crl.M.P.No.11464 of 2021 in Crl.O.P.No.18605 of 2021.]

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the impugned docket order dated 07.08.2021 issuing Non-Bailable Warrant against the petitioner herein passed in C.C.No.2997 of 2021 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.M.Deivanandam

For R1 : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the impugned docket order, dated 07.08.2021 issuing Non-Bailable Warrant against the petitioner in C.C.No.2997 of 2021 by the learned Chief Metropolitan Magistrate, Egmore, Chennai (trial Court).

2.The learned counsel for the petitioner/A1 submitted that the petitioner is the estranged husband of the 2nd respondent. A2 and A3 are the parents of the petitioner. The marriage between the petitioner and the 2nd respondent had taken place on 23.11.2012. The petitioner is a Technocrat and he got employment in USA and went to USA during the month of January 2018. Thereafter, the 2nd respondent joined the



petitioner in USA on 03.12.2018 and later, the 2nd respondent came back to India and made allegation that she was forcibly sent back by the petitioner by demanding dowry. However, H.M.O.P.No.216 of 2019 was filed by the petitioner before the Family Court, Nagercoil on the ground of cruelty. The 2nd respondent has filed H.M.O.P.No.618 of 2019 before the Subordinate Court, Poondhamallee for restitution of conjugal rights. Now, both the cases have been transferred and pending before the learned I Additional Family Judge, Chennai and renumbered as H.M.O.P.Nos.2236 and 2238 of 2021.

3.The learned counsel for the petitioner further submitted that earlier to the registration of FIR, on 24.01.2020, the 1st respondent Police contacted the petitioner in USA and enquired with regard to the matrimonial dispute. Later, the petitioner came to know that the First Information Report was registered on 21.02.2021 against him for offense, punishable under Sections 498A and 406 of IPC and Section 4 of the Dowry Prohibition Act. The petitioner's parents A2 and A3 obtained anticipatory bail on 13.05.2021. The petitioner not filed any anticipatory bail, since he was in USA. On completion of investigation, charge sheet was filed against all the three accused before the learned Chief Metropolitan Magistrate, Egmore, Chennai and the same was taken on file as C.C.No.2997 of 2021. The trial Court issued summons were served to the parents of the petitioner viz., A2 and A3 and with regard to the petitioner, the summon could not be served, since he was in USA. On 07.08.2021, A2 and A3 appeared before the trial Court and their counsel filed Memo of Appearance for them. As regards the petitioner is concerned, since he was in USA, summon could not be served to him and he did not appear for trial and hence, a Non-Bailable Warrant was issued against him on 07.08.2021. The petitioner already planned a trip to India to appear before the trial Court and to co-operate with the trial. Due to COVID-19 pandemic, he was unable to return back immediately from work place. In the meanwhile, the petitioner came to know that on the request of the Deputy Commissioner of Police, Anna Nagar District, Chennai, a Look Out Circular was issued in suspect No.From 2141718 to 2141718 on 22.02.2021. The contention of the petitioner is that already LOC was issued against him and further, Non-Bailable warrant also pending against him and hence, the petitioner will be detained in the Airport.

4.The learned counsel for the petitioner further submitted that the warrant issued under Section 87 of Cr.P.C., is not proper, since the summon under Section 204 of Cr.P.C., was not received by the petitioner. In support of his contention, the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in the case of "Inder Mohan Goswami and another Versus State of Uttaranchal and others reported in (2007) 12 SCC 1". Now, the petitioner is willing to participate in the trial and he will not be a reason for any delay. Hence, he prayed for set aside the



impugned docket order, dated 07.08.2021 issuing Non-Bailable Warrant against the petitioner in C.C.No.2997 of 2021 and to delete and cancel the Look Out Circular in suspect No. from 2141718 to 2141718. The petitioner is travelling to other countries by using his passport No.R5448141. Now, the learned counsel for the petitioner filed undertaking affidavit with the flight ticket that the petitioner will be reached Chennai on 29.01.2022 and appear before the trial Court and participate in trial in C.C.No.2997 of 2021.

5.The learned Additional Public Prosecutor appearing for the 1st respondent submitted that the petitioner is an accused along with his parents/A2 and A3. The petitioner had chased away the 2nd respondent from USA within a short period of stay there. After petitioner had migrated to USA, he demanded dowry from the 2nd respondent and made harassment. Unable to bear any further, she came down to India. In the meanwhile, the petitioner had filed divorce petition on the ground of cruelty and the 2nd respondent filed a petition for restitution of conjugal rights. The 2nd respondent having no other option, lodged a compliant and the First Information Report was registered and investigation conducted and charge sheet filed. Since the petitioner failed to appear before the trial Court, the trial Court issued Non-Bailable Warrant against him on 07.08.2021.

6.This Court considered the rival submissions and perused the materials available on record.

7.The Hon'ble Apex Court in catena of judgments following the case of "Menaka Gandhi Versus Union of India reported in AIR 1978 SC 597" consistently held that it is a constitutional right of a person to travel abroad and no one should be deprived of his life and liberty except the procedure established in law. This Court following same in the case of "E.V.Perumalsamy Reddy and others Versus State represented by the Deputy Commissioner of Police reported in 2014 (1) MLJ 125" and in the case of "S.Martin Versus the Deputy Commissioner of Police, Central Crime Branch reported in 2014 (1) MLJ 647" held that once a person is granted bail, no question of sustaining Look Out Circular would arise, unless the person is involved in any heinous crimes and in terrorist activities. In this case, the issue is a matrimonial dispute between the husband and wife.

8.It is seen that since the petitioner failed to appear before the trial Court in C.C.No.2997 of 2021, the trial Court issued Non-Bailable Warrant on 07.08.2021. Now, the learned counsel for the petitioner submitted that the petitioner is willing to participate in trial and he will not be reason for delay in progress of the trial.

9.The reason given by the petitioner for his non appearance on 07.08.2021 appears to be reasonable. Earlier



summons could not be served, since the petitioner was in USA which is a known fact. In fact, the allegation of dowry demand and harassment is alleged to be happened when the petitioner and the 2nd respondent were living together in USA. While being so, the question of abscondance does not arise.

10. Now, the petitioner has filed affidavit and undertakes that he will appear before the trial Court and execute necessary bond. In view of the same, the order, dated 07.08.2021 in C.C.No.2997 of 2021 passed by the trial Court is set-aside and this Criminal Original Petition is allowed. The petitioner is directed to appear before the trial Court execute bond with sureties as per terms of the trial Court.

11. As regards the LOC is concerned, the Look Out Circular issued by the Bureau of Immigration (Ministry of Home Affairs), Government of India, New Delhi against the petitioner (Passport No.R5448141) in LOC Suspect No. from 2141718 to 2141718 is a collateral act, which is on the request of the Deputy Commissioner of Police, Anna Nagar District, Chennai. Since the petitioner by his affidavit undertakes to participate in trial and the case is arising out of the matrimonial dispute, this Court quashes the Look Out Circular issued by the Bureau of Immigration (Ministry of Home Affairs), Government of India, New Delhi against the petitioner (Passport No.R5448141) in LOC Suspect No. from 2141718 to 2141718. The petitioner to have unhindered access to travel.

Sd/-

Assistant Registrar (CS-III)

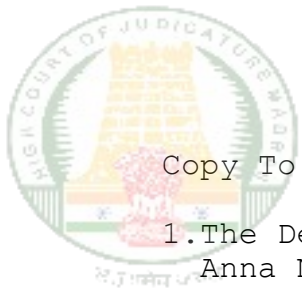
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Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate Court,
Egmore, Chennai.
2. The Inspector of Police,
W-8, All Women Police Station,
Thirumangalam, Chennai.
3. The Public Prosecutor,
High Court, Madras.



Copy To:

1.The Deputy Commissioner of Police,
Anna Nagar District, Chennai.

2.The Bureau of Immigration (Ministry of Home Affairs),
Government of India,
New Delhi.

+2ccs to Mr.V.K.Sathiyamoorthy, Advocate SR. No.69222
(07/01/2022)

+8ccs to Mr.M.Deivanandam, Advocate SR. No.69308 (07/01/2022)

CRL.O.P.No.18605 of 2021

BP (CO)

PR (27/12/2021)