



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Criminal Jurisdiction )

Wednesday, the Twenty Ninth day of December Two Thousand and  
Twenty One  
PRESENT

**The Hon`ble Mrs.Justice S.ANANTHI**

WEB COPY

Crl.M.P. (MD)Nos.12084 and 12085 of 2021  
in  
Crl.O.P. (MD)SR.Nos.39245 and 39196 of 2021

NAGASANKAR

... PETITIONER/PETITIONER/  
ACCUSED No.3  
IN CRL MP (MD)No.12084/2021 IN  
CRL OP (MD) SR.No.39245/2021

SUBRAMANIAN

... PETITIONER/PETITIONER/  
ACCUSED No.4  
IN CRL MP (MD)No.12085/2021 IN  
CRL OP (MD) SR.No.39196/2021

**Vs**

THE STATE REP.BY  
THE INSPECTOR OF POLICE  
VILAKKUTHOON POLICE STATION, (L AND O) ,  
MADURAI CITY.  
CR.NO. 697 OF 2021.

... RESPONDENT/RESPONDENT/  
COMPLAINANT  
IN BOTH PETITIONS

**COMMON PRAYER IN CRL MP (MD)Nos.12084 & 12085/ 2021 IN CRL OP (MD) SR.Nos.39245 & 39196/2021:**

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to permit the Petitioner/Accused-3 & 4 to move the main bail petition filed before this Honble Court U/S.439 of Cr.P.C. with the dismissal order of the bail petition by the Learned Judicial Magistrate No.1, Madurai in Cr.MP.Nos.2332&2335/2021,Cr.No.697/2021 dated 23.12.2021.

**COMMON PRAYER IN CRL OP (MD)SR.Nos.39245 & 39196/2021:**

To enlarge the Petitioner/Accused Nos.3 & 4 on bail in Crime No.697/2021 on the file of the Inspector of Police, Vilakkuthoon Police Station, Madurai City.

**COMMON ORDER :** These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.S.SITHARTHAN, Advocate for the petitioner in both Petitions and of Mr.E.ANTONY SAHAYA PRABAHAR, Additional Public Prosecutor on behalf of the Respondent in both petitions, the court made the following order:-



These petitions have been filed to permit the petitioners/Accused Nos.3 and 4 to move the main bail petitions filed before this Court under Section 439 of Cr.P.C., with the dismissal order of the bail petitions by the learned Judicial Magistrate Court No.1, Madurai in Cr.M.P.Nos.2332 and 2335 of 2021 in Crime No.697 of 2021, dated 23.12.2021.

2.The learned counsel appearing for the petitioners submits that the petitioners/A3 and A4 move bail petitions in Crl.M.P.Nos.2332 and 2335 of 2021 before the learned Judicial Magistrate Court No.1, Madurai and the same were dismissed on 23.12.2021. He further submits that as per the provisions of Section 439 of Cr.P.C., the petitioners are entitled to bail petition before this Court or learned Court of Sessions. But in that provision, it is nowhere specified that before approaching this Court, the accused has to file petition first only before the learned Court of Sessions. Therefore, the petitioners have directly come before this Court with the bail petitions after the dismissal of the bail petitions filed before the learned Judicial Magistrate No.1, Madurai without approaching the learned Court of Sessions.

3.In support of his contentions, the learned counsel for the petitioners also relied upon the Judgment of the Hon'ble Supreme Court of India in the case of **Sundeep Kumar Bafna Vs. State of Maharashtra and another** reported in (2015) 3 SCC (Cri) 558, wherein it has been held as follows:-

*"There are no restrictions on the High Court to entertain an application for bail provided always the accused is in custody, and this position obtains as soon as the accused actually surrenders himself to the Court. Reliance on R.V.Evans, by the learned Senior Counsel for the respondents before us is misplaced, since on its careful reading, the facts are totally distinguishable inasmuch as the accused in that case had so engineered events as not to be available in persona in the Court at the time of the consideration of his application for surrender. The Court of Appeal observed that they "do not agree that reporting to the usher amounts to surrender." The Court in fact supported the view that surrender may also be accomplished by the commencement of any hearing before the Judge, however brief, where the accused person is formally identified and plainly would overtly have subjected himself to the control of the Court. Incontrovertibly, at the material time the appellant was corporeally present in the Bombay High Court making Evans applicable to the case of the appellant rather than the case of the respondent. A further singularity of the present case is that the offence has already been committed to the Sessions court, the appellant-accused could not have been*



brought before the Magistrate. It is beyond cavil "that a Court takes cognizance of an offence and not an offender" as observed in Dilawar Singh Vs. Parvinder Singh, in which Raghubans Dubey Vs. State of Bihar, was applied. Therefore, the High Court was not justified in directing the appellant to appear before the Magistrate."

4.Further, the learned counsel for the petitioners has also relied upon the decision of a Division Bench of the Hon'ble Supreme Court of India, which was published in Live Law, wherein, it has been held as under:-

"April 13, 2014-In a path-breaking Judgment, a two-Judge Bench of the Supreme Court has held that there are no restrictions on the High Court or Sessions Court to entertain an application for bail, provided, accused is in custody. The judgment has put an end to the decades old practice of first filing a regular bail application before a Magistrate having jurisdiction, and get it rejected for the purpose of approaching the Sessions Court or High Court for bail. The case arises out of a Special Leave Petition seeking regular bail under Section 439 of the Code of Criminal Procedure (Cr.P.C), which was declined by the High Court of Mumbai, with the observations that it is the Magistrate whose jurisdiction has necessarily to be invoked and not of the High Court or the Sessions Judge."

5.As per the ratio laid down by the Hon'ble Supreme Court of India, this Court has jurisdiction to entertain the bail application without dismissal order of the bail petitions passed by the trial Court.

6.In view of the above, these petitions are allowed. Registry is directed to number the main petitions and post the matter on 03.01.2022 before the regular Court.

sd/-

29/12/2021

/ TRUE COPY /

/ /2021

Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

**Note :** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



- 1 THE JUDICIAL MAGISTRATE NO.I,  
MADURAI.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,  
MADURAI DISTRICT.
- 3 THE OFFICER INCHARGE  
SUB JAIL, ARUPPUKOTTAI.
- 4 THE INSPECTOR OF POLICE  
VILAKKUTHOON POLICE STATION, (L AND O) ,  
MADURAI CITY.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI.

**ORDER**

**IN**

Crl.M.P. (MD) Nos.12084 and  
12085 of 2021  
in  
Crl.O.P. (MD) SR.Nos.39245  
and 39196 of 2021  
Date :29/12/2021

SA/PN/SAR.1/31.12.2021/4P/6C