



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.6235 of 2022 and
Crl.M.P.No.3520 of 2022

J.Mohanram
confined at Central Prison,
Coimbatore.

...Petitioner

-Vs-

State represented by,
The Inspector of Police,
T-5, Thiruverkadu Police Station,
Thiruverkadu.
(Crime No.500/2004)

...Respondent

Prayer : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, praying to call for the records in C.C.No.519/2005 on the file of the learned Judicial Magistrate No.II, Poonnamaallee and set aside the Docket Order dated 10.05.2021.

For Petitioner : Mr.R.Vivekananthan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor.

O R D E R

This Criminal Original Petition has been filed to call for the records in C.C.No.519/2005 on the file of the learned Judicial Magistrate No.II, Poonnamaallee and set aside the Docket Order dated 10.05.2021.

2. The learned counsel for the petitioner would submit that the petitioner is an accused in Crime No.500 of 2004 registered on 19.09.2004 by the respondent for the offences under Section 286 of IPC r/w Section 5 and Section 6 (A) of Explosives Substances Act 1908. The petitioner was arrested on 28.12.2004, thereafter the petitioner was granted statutory bail under Section 167(2) of CrPC by the learned Judicial Magistrate - II, Poonamallee on 18.04.2005. The respondent after completing the investigation had filed the final report and it has been taken



up in C.C.No.519 of 2005 on the file of the Judicial Magistrate - II, Poonamallee. The petitioner was not served with any summons. While so, the petitioner was arrested on 10.10.2018 in connection with a case in Crime No.592 of 2015 registered by the Sulur Police Station for the offences under Section 120(b), 174, 148, 149, 302 & 307 of IPC r/w Section 25(1B) (a) and 27 of Indian Arms Act, 1959. While the petitioner was in custody, a PT warrant was issued against the petitioner on 29.11.2018 in C.C.No.519/2005 by the learned Judicial Magistrate - II, Poonamallee. Thereafter, the petitioner was detained under Act 14 by an order dated 10.12.2018. The petitioner had filed HCP.No.2896 of 2018 and this Court by an order dated 10.06.2019, quashed the detention order and subsequently, the petitioner had filed bail application in Crime No.592 of 2015 registered by the Sulur Police Station and this Court by an order dated 19.07.2019 in CrI.O.P.No.18984 of 2019 had granted condition bail to the petitioner. As against the said order, the Sulur police had preferred SLP.No.9315 of 2019 to cancel the bail before the Hon'ble Apex Court. However, the SLP.No.9315 of 2019 was dismissed by the Hon'ble Apex Court on 07.03.2022. Further while, the petitioner was under preventive detention he was produced through PT warrant before the Judicial Magistrate - II, Poonamallee in C.C.No.519/2015 on 10.05.2021. The learned Judge without affording any opportunity to the petitioner had forfeited the bond and had remanded the petitioner to judicial custody in CC.No.519 of 2015.

3. The learned counsel would reiterate that in CC.No.519 of 2015, summons were not served on the petitioner till his arrest in the subsequent case and even prior to 29.11.2018, on the previous hearing date on 20.11.2018, the daily status of the E-Courts services shows (Issue FS to A4). Till the arrest of the petitioner in the subsequent case in Cr.No.592 of 2015, bail granted to the petitioner in C.C.No.500 of 2004 was not cancelled. The petitioner was produced on PT warrant from Coimbatore prison on 10.05.2021 before the Judicial Magistrate No.II, Poonamallee and the learned Magistrate without affording any opportunity to the petitioner, had immediately on production before the Court on 10.05.2021 had forfeited the bond and further without affording opportunity to furnish fresh bond had cancelled the bail and remanded him to judicial custody.

4. The learned counsel would submit that the procedure adopted by the learned Magistrate in remanding the accused without cancellation of earlier bail is erroneous. He would submit that the petitioner was not absconding and that no summons were served on him till his arrest in the subsequent case. The learned counsel would submit that in such circumstances when the accused is on bail and if he is produced on PT warrant by police, opportunity should be given to the



accused to explain the reason for his non appearance and if the accused is able to satisfactorily explain the reason for his absence before the Court, he could be let off by recalling the warrant. Otherwise, the trial Court is required to record reason and give a finding that the bond has been forfeited. However, the learned Judge without following the procedure and without taking into consideration, the explanation given by the petitioner has forfeited the bond and had remanded him to judicial custody. The Court has also proceeded to cancel the bail on the same day of his production before the Court, thereby he would seek to set aside the order passed by the learned Judge and seek to enlarge the petitioner on bail by accepting fresh sureties.

5. He would submit that in the case of Palanivel Vs. State rep by Inspector of Police, Veeranam Police Station, Salem District reported in (2019) 3 MLJ (Crl.) 351 in a similar situation a question was raised when an accused person who is on bail is arrested in another case and brought before Court on PT warrant, whether the PT warrant can be converted into a regular warrant and he be remanded to custody? This Court has held that a PT warrant cannot be converted to a regular warrant, when the accused is already on bail and he cannot be remanded on the strength of the PT warrant. In this case also the bail has not been cancelled.

6. The learned Additional Public Prosecutor would submit that the case is of the year 2005 and the respondent completed the investigation and filed final report in CC.No.519 of 2005. The petitioner though granted statutory bail on 18.04.2005 did not appear before the Court and the steps taken by the respondent to serve summons on the petitioner ended in futility. Subsequently, he was arrested in connection in Cr.No.519 of 2015 registered by the Sulur Police Station and that the petitioner was in judicial custody in Coimbatore Prison. The trial Court had issued P.T.warrant for production of the accused and the petitioner was produced on 10.05.2021 and the trial Judge had forfeited the bond and had remanded him to custody. Further, he would fairly submit that the summons have not been served on the petitioner in CC.No.519 of 2005 and the statutory bail granted earlier in Cr.No.500 of 2004 on the file of the respondent was not cancelled.

7. Heard both sides and perused the materials available on record.

8. The petitioner is an accused in Cr.No.500 of 2004 registered by the respondent, he was arrested on 28.12.2004 and thereafter the petitioner had been granted statutory bail under Section 167(2) Cr.PC on 18.04.2005. The petitioner has



furnished sureties and he has been let out on bail. Thereafter, the summons have not been served on the petitioner. The E-Courts status before the arrest of the petitioner on 20.11.2018 discloses (Issue FS to A4) thereby meaning that summons were not served. The bail granted to the petitioner had not been cancelled so far.

9. In Palanivel case (cited supra), this Court at paragraph 20 had raised a question "(a)When an accused person is on bail and he fails to appear before the trial Court resulting in a non-bailable warrant issued against him and the accused gets arrested in another case and he is produced before the trial Court through the PT warrant, in execution of the non-bailable warrant, whether the PT warrant can be converted into a regular warrant and the accused person can be remanded to custody."

The above question was answered by this Court at Paragraph 29 of the judgment "29. It is therefore clear that a PT warrant can never be converted into a regular warrant, in a case where the accused person is already on bail and thereby it does not authorize the Court to remand the accused on a strength of a regular warrant. The first issue raised before this Court is answered accordingly."

10. In this case, as stated above, the petitioner was granted statutory bail, pursuant to which he has produced sureties and thereafter let out on bail. The record shows that after filing of the final report and taking cognizance summons issued from the Court had not been served on the petitioner who has been ranked as A4. E-Courts status shows that fresh summons were issued to the petitioner who was ranked as A4. Under such circumstances, when the petitioner was on bail and without his bail bond being cancelled, the learned Judge has remanded the petitioner when he was produced before the Court on a PT warrant. The petitioner was not afforded an opportunity to explain the reason for his non appearance before the Court and to execute fresh personal bond.

11. Admittedly, in this case, when the Court status itself shows that the summons were not served on the petitioner and when no NBW had been issued there is no requirement for the petitioner to explain as to why he did not appear before the Court from the particular date onwards. The learned Judge had misconstrued para 34 of the judgment reported in Palanivel case (cited supra). Further, no opportunity was given to the petitioner to execute fresh personal bond and furnish sureties. In such circumstances, the order remanding the petitioner to custody is erroneous.



12. As stated above, the petitioner had not been served with summons and the bail already granted was also not cancelled. In view of the above, the docket entry of the Judicial Magistrate No.II, Poonamallee dated 10.05.2021 stands set aside. The petitioner is ordered to be released on bail with the following directions :-

a) the petitioner is directed to be produced before the Court below and the petitioner shall execute a fresh bail bond for a sum of Rs.20,000/- along with two sureties for a like sum, out of which one surety shall be a blood relative.

b) The petitioner shall appear before the Judicial Magistrate No.II, Poonamallee on all hearing dates at 10.30 a.m. until the completion of the proceedings in CC.No.519 of 2005. This condition shall not be relaxed till the completion of the proceedings.

c) the petitioner shall not tamper with evidence or witness during trial.

d) the petitioners shall not abscond during trial.

e) on breach of any of the aforesaid conditions, the Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the Trial Court itself as laid down by the Hon'ble Supreme Court in P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560];

f) if the petitioner thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

g) The Trial Court shall proceed further with the trial on a day-to-day basis in accordance with the guidelines given in Vinod Kumar Vs State of Punjab reported in 2015 (1) MLJ (Cr1) 288 SC.

h) If the petitioner adopts any dilatory tactics, it is open to the trial Court to remand the petitioner to custody as laid down by the judgment of the Hon'ble Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh (JT 2001 (4) SC 319).

i) The Trial Court shall complete the proceedings in CC.No.519 of 2005 as expeditiously as possible.

14. With the above directions, the criminal original petition is ordered. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar



jas/tsh

To

WEB COPY

1. The Judicial Magistrate No.II,
Poonnamaallee.
2. The Inspector of Police,
T-5, Thiruverkadu Police Station,
Thiruverkadu.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.

+2cc to M/s.R.Vivekanandan, Advocate Sr.20022

Crl.O.P.No.6235 of 2022 and
Crl.M.P.No.3520 of 2022

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srg 04/04/2022