



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.NO.7699 OF 2022

1. Jaya Kumar  
S/o.Sekaran
2. K.Pushba  
W/o.Kalaimani
3. Udaya Chandran  
S/o.Kalaimani

... Petitioners

.Vs.

The State Represented by,  
The Inspector of Police,  
C-2, Hasthampatty Police Station,  
Salem City, Salem District.  
(Ref Crime No.396 of 2018  
dated 07.10.2018)

... Respondent

PRAYER:- Criminal Original Petition filed under Section 482 of Cr.P.C., pleaded to recall the Non-Bailable warrant issued against the petitioners in S.T.C.No.5253 of 2019 on the file of the Additional Mahila Court (Magisterial Level) at Salem.

For Petitioners : Mr.J.Kather Hussain

For Respondent : Mr.A.Gokulakrishnan  
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to recall the Non-Bailable warrant issued against the petitioners in S.T.C.No.5253 of 2019 on the file of the Additional Mahila Court (Magisterial Level) at Salem.

2. The learned counsel for the petitioners would submit that the petitioners are A-1 to A-3 facing trial in S.T.C.No.5253 of 2019 on the file of the Additional Mahila Court (Magisterial Level) at Salem for the offence punishable under



Section 8(b) of the Immoral Traffic (Prevention) Act, 1956. The petitioners had earlier filed an application in Crl.O.P.No.14358 of 2021 for quashing the proceedings pending in S.T.C.No.5253 of 2021 before this Court. However, this Court by an order dated 19.08.2021 had dismissed the petition by directing the Trial Court to complete the trial within a period of three months.

3. The learned counsel for the petitioners would further submit that the order was communicated to them belatedly. Meanwhile, since no summons were not served on the petitioners from the Court, thereby, they did not appear before the Court. While so, this Court on 08.12.2021 without any summons being served on the petitioners, the Trial Court has straight away issued a non-bailable warrant of arrest against the petitioners.

4. The learned counsel for the petitioners would further submit that the offences against these petitioners are bailable in nature and he would further submit that once the Court finds that the petitioners are not appearing before the Court, the Court shall issue a bailable warrant and if the person does not appear before the Court even after the execution of bailable warrant, then only the learned Magistrate shall issue a non-bailable warrant.

5. The learned counsel for the petitioners would further submit that the petitioner have filed an application for recall for warrant, however, the learned Trial Judge refused to entertain the same. He would further submit that the petitioner's in due compliance of the order passed by this Court in Crl.O.P.No.14358 of 2021 are ready to co-operate for the speedy disposal of the trial.

6. The learned Additional Public Prosecutor would submit that though the summons have not been served on the petitioners 2 and 3, the petitioners being aware of the order passed by this Court in Crl.O.P.No.14358 of 2021 dated 19.08.2021 and the petitioners are duty bound to appear before the Court, whereas, they did not appear consequently for three hearings. Thereafter, the Trial Court has issued a non-bailable warrant of arrest against the petitioners. However, he would fairly submit that before the issuance of non-bailable warrant, the Court had not issued bailable warrant to the petitioners.

7. The learned Additional Public Prosecutor would further submit that in respect of A-1, summons have already been served. As far as A-2 and A-3 are concerned, summons have not been served.

8. Heard both parties and perused the materials available on records.



9. In this Case, admittedly the Court without issuing a bailable warrant has straight away issued a non-bailable warrant of arrest. Now an undertaking is given by the petitioners that they will co-operate with the Trial Court in compliance of the order passed by this Court in Crl.O.P.No.14358 of 2021. Further, the offences alleged are also bailable in nature and this Court also takes into consideration the Covid-19 pandemic situation, where the courts did not function regularly.

10. In view of the above, the petitioners are directed to surrender before the Court within a period of one week from the date of receipt of a copy of this order and the petitioners are at liberty to file an application to recall the Non-bailable warrant. On filing of such application, the Trial Court shall consider and recall the warrant on the same day. Meanwhile, the petitioners are directed to appear before the Court every day at 10.30 A.M., till the disposal of the trial. The petitioners shall also give an affidavit of undertaking that they will cross-examine the witnesses on the same day of their examination in chief. The Trial Court shall complete the trial within a period of one month from the date of surrender of the petitioners.

11. This Criminal Original Petition stands disposed of with the above observation and direction.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

1. The Inspector of Police,  
C-2, Hasthampatty Police Station,  
Salem City, Salem District.
2. The Public Prosecutor,  
High Court of Madras.

+1cc to Mr.J.Kather Hussain, Advocate, S.R.No.23053

CRL.O.P.NO.7699 OF 2022

RK(CO)  
PBS/26/04/2022