



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2022

CORAM:

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

CRL.O.P.No.8174 of 2022

G.Raveendran

...Petitioner/Accused No.2

Vs.

The State rep by
Inspector of Police,
District Crime Branch,
Tiruppur.

Crime No.13 of 2016

...Respondent/Complainant

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, praying to direct the Judicial Magistrate No.I, Udumalpet to entertain the petition to recall the Non-Bailable Warrant dated 28.03.2022 and surrender petition filed by his counsel without physical presence of the petitioner and direct the trial Court to consider the petition to recall the non bailable warrant dated 28.03.2022 on the same day.

For Petitioner : M/s.M.Mohamed Riyaz

For Respondent : Mr.A.Gokulakrishnan

Additional Public Prosecutor.

ORDER

This Criminal Original Petition has been filed to direct the Judicial Magistrate No.I, Udumalpet to entertain the petition to recall the Non-Bailable Warrant dated 28.03.2022 and surrender petition filed by the counsel without insisting the physical presence of the petitioner and direct the trial Court to consider the petition to recall the non bailable warrant dated 28.03.2022 on the same day.

2. Learned counsel for the petitioner would submit that the petitioner/A2 is facing trial in C.C.No.17 of 2022 for the offences under Sections 120(b), 420 and 34 of IPC. He would submit that this case was posted for appearance of petitioner on 28.03.2022 and on that day, the petitioner was affected with



WEB COURT

covid and thereby, the petitioner was unable to appear before the Court on the first hearing and he was unable to engage his counsel also. In the meanwhile, the Court has issued a NBW for arresting the petitioner. He would further submit that the petitioner apprehends that if he surrenders before the Trial Court, he would be remanded to Judicial custody. This Court in Crl.O.P.(MD.17104 of 2014 dated 17.04.2014 and in the judgment reported in 2016 SCC OnLine Mad 1457 in the case of S.Sundar Vs State by Inspector of Police, Vigilance and Anti-Corruption, City II Detachment, Chennai-35, had directed the Trial Court to consider the Application for recall without insisting the presence of the petitioner in Court. He would also submit that this Court in Crl.O.P.No.21713 of 2019 vide order dated 13.08.2019 also directed that the trial Court shall not insist for presence of the accused at the time of filing Application to recall the warrant. He would submit that the petitioner is ready to co-operate for expeditious trial and he is even prepared to surrender before the Court for recalling the warrant and the learned Judicial Magistrate may be directed to consider the petition to recall on the same day of his appearance.

3. Learned Additional Public Prosecutor would submit that the case was posted for appearance of the accused on 28.03.2022. He would submit that since the petitioner did not appear before the Court, the Court had issued NBW of arrest. Subsequently, the case has been posted on 18.04.2022 and once again adjourned to 18.05.2022 and NBW is pending.

4. Heard the learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent and perused the materials available on record.

5. The petitioner has furnished the Covid-19 Antigen test report dated 23.03.2022. It shows that the petitioner was affected with Covid-19 on 23.03.2022, and thereby, he had not appeared on the first hearing date on 28.03.2022. The petitioner had referred to various judgments regarding recall of NBW. In the above cited judgments, this Court had directed the Trial Court not to insist the personal appearance of the petitioner/accused at the time of filing the application to recall non-bailable warrants. However, the petitioner has submitted that he is prepared to surrender and apply for recalling NBW and he has also undertaken to co-operate with the trial.



6. In view of the above, a direction is issued to the petitioner to surrender within a period of three weeks from the date of receipt of a copy of this order before the Trial Court. On such surrender, the learned Trial Judge shall recall the NBW and the petitioner shall file an Affidavit of undertaking that he would co-operate for speedy disposal of the case.

7. Accordingly, this Criminal Original Petition stands disposed of.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nr/nti
To

1. The Judicial Magistrate No.I, Udumalpet.
2. The Inspector of Police,
District Crime Branch,
Tiruppur.
3. The Public Prosecutor,
High Court of Madras.

+1 CC to Mr.M.Mohammed Riyaz, Advocate sr 28332.

CRL.O.P.No.8174 of 2022

AKII(CO)
SP(11/05/2022)