



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

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THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No. 21286 of 2021

Karthick Prakash @ Ondiveeran

... Petitioner/2nd Accused

Vs.

The Inspector of Police,
Avinasipalayam Police Station,
Tiruppur District.
Crime No.136 of 2016

... Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioner on bail in S.C.No.108 of 2018 pending on the file of the learned Principal Sessions Judge, Tiruppur.

For Petitioner : Mr.M.Mohamed Riyaz
for Mr.A.P.Sathyamoorthy

For Respondent : Mr.S.Sugendran
Government Advocate (Crl. Side)

O R D E R

(The case has been heard through video conference)

The petitioner who was arrested and remanded to judicial custody on 09.06.2020 for the offences punishable under Section 457, 395, 397 of IPC in S.C.No. 108 of 2018 on the file of the learned Principal Sessions Judge, Tiruppur, seeks bail.

2 It is the case of jumped bail. The petitioner is arrayed as second accused and facing trial in S.C.No. 108 of 2018 on the file of the learned Principal Sessions Judge, Tiruppur, for the offences under Sections 457, 395, 397 of IPC. Since, the petitioner did not appear before the Trial Court on 08.01.2020, the learned Judge had issued Non-bailable warrant of arrest against the petitioner. Pursuant to the which, the petitioner has been arrested on 09.06.2020.

3. The learned counsel for the petitioner would submit that this is the 7th application for bail and this Court finding that the petitioner was arrested pursuant to a NBW and finding that 7 other cases are pending against the petitioner had dismissed the earlier application. He would further submit that this Court while dismissing the earlier application on 14.10.2020 finding that the



other co-accused in this case were absconding had directed the respondent/police to secure the other accused or else had directed the trial judge to split up the case against the petitioner and complete the trial. Despite the dismissal of the petition on 14.10.2020, there is no progress in the trial. A5 in this case is in Judicial custody in another case, confined at Central Prison, Madurai and the respondent has not taken any steps to produce A5 before the Court and further the trial judge has not taken any steps to split up this case, as against the petitioner. He would further submit that the petitioner is in custody from 10.06.2020 for the past more than one and half years and the detention of the petitioner amounts to pretrial conviction. He would submit that the petitioner was initially granted bail in Crl.MP.No.558 of 2016 by the Principal Sessions Judge, Tiruppur on 01.06.2016. Thereafter, the bail was cancelled without giving sufficient opportunity by order of the same Judge in Crl.MP.No.618 of 2016 on 15.06.2016. Subsequently, the petitioner had approached this Court seeking for bail in Crl.OP.No.16106 of 2019 and this Court granted bail to the petitioner on 08.07.2019, thereafter, since the respondent implicated him in other cases he was unable to appear before the Court and thereby the trial judge had issued NBW of arrest on 14.09.2019, pursuant to which the petitioner had been arrested on 09.06.2020. He would submit that the respondent till date have not taken any steps to cancel the bail granted to the petitioner by this Court in Crl.OP.No.16106 of 2019. He would submit that this Court in the case of Pilliappan V. State reported in 2018 SCC online Mad 13298 has held that when the earlier bail has not been cancelled and the petitioner has been arrested pursuant to the NBW, the bail application of the petitioner to be considered afresh either under Section 436 and 437 of the Cr.PC. and the Court has to consider not only the usual parameters for grant of bail but also the additional factor viz., his abscondence.

4. The learned counsel further submits that the Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India.

5. In support of his contention he would rely on the judgment of the Hon'ble Apex Court in the case of Ashim @ Asim V. National Investigation Agency reported in 2021 SCC online SC 1156. He would reiterate that the long incarceration of the petitioner may be considered and the petitioner may be enlarged on bail.

6. He would further reiterate that, despite earlier dismissal on 14.10.2020, there is no progress in trial and the respondent have not taken any steps to expedite the trial and the trial judge had not complied with the directions of this Court to split up the case. He would submit that all the other co-accused excepting A5 in this case are on bail. The petitioner is prepared to offer fresh sureties and he undertakes to abide with the stringent conditions that may be imposed by this Court and he would pray for grant of bail.



7. The respondent has filed detailed status report. It is submitted that the petitioner involved in following cases :--

Previous case details of Karthick Prakash @ Ondiveeran

District	Police Stations	Cr.No	CC/PRC/SC	Sec & Law	Accused	Stage
Tiruppur	Avinashipalayam	136/16	SC 108/18	395, 397 & 457 IPC	Total Acc 06 Ondiveeran-A2	For framing charge
Theni	Bodinayakanur	47/15	SC 151/15	114 & 397 IPC	Total Acc 04 Ondiveeran-A1	Witness Examination of PW1&2 (Recall)
Theni	Bodinayakanur	493/13	SC 150/15	294 (b), 323 & 307 IPC	Total Acc 03 Ondiveeran-A1	Witness Examination of LW7 & 8 (Recall)
Salem	Thalaivasal	177/17	PRC 2/20	392 & 397 IPC	Total Acc 03 Ondiveeran-A1	Accused Appearance A/A
Kallakurichi	Thiyadurugam	307/17	SC 193/20	120-B, 392, 397 & 457 IPC	Total Acc 03 Ondiveeran-A1	A1, A2, A3 For the execution of NBW
Erode	Modakkurichi	41/18	CC 224/18	457 & 380 IPC	Total Acc 01 Ondiveeran-A1	For the execution of NBW against Ondiveeran
Erode	Modakkurichi	239/18	CC 225/18	392 & 596 (ii) IPC	Total Acc 01 Ondiveeran-A1	For the execution of NBW against Ondiveeran

8. It is stated that the petitioner in this case along with other accused trespassed in the complainant's house at kinfe point and had robbed 25soverigns of gold, Silver articles and cash of Rs.2lakhs and Car bearing Registration No.TN42 E 4005 worth about Rs.5lakhs and all the above totally to the sum of Rs.9,50,000/- were



recovered. The case was registered in Cr.No.136 of 2014 for the offences under Section 395, 457, 395 r/w.397 IPC and after completion of investigation the charge sheet was filed before the Judicial Magistrate, Pollachi and the same was taken up on file in PRC.No.20 of 2016 dated 21.12.2016 and thereafter the case was committed to the Principal District and Sessions Judge, Tiruppur and pending SC.No.108 of 2018, once again the case has been transferred to Additional Sub Court, Tiruppur on 12.08.2021. It is further stated that the case has been posted for framing of charges on 04.02.2022. The respondent has objected stating that if the bail is granted to the petitioner, there is possibility of the petitioner absconding again and thereby derailing the progress of trial.

9. The learned Government Advocate (Crl. side) would submit that the petitioner is arrayed as A2 in this case, he alongwith other accused trespassed into the house of the defacto complainant and robbed the jewels, cash and car totally valued at Rs.9,50,000/- and based on the complaint by Sathish Babu/Defacto complainant a case has been registered by the respondent in Cr.No.136 of 2016 for the offences under Section 395, 447, 395 r/w.397 IPC. The petitioner was granted bail by the Sessions Judge, Tiruppur in Crl.MP.No.558 of 2016 dated 01.06.2016 and thereafter it was cancelled by the same Judge on 06.06.2016 and thereafter the petitioner was granted bail by this Court in Crl.OP.No.16106 of 2019 dated 08.07.2019, after obtaining bail, the petitioner failed to appear before the trial Court. The trial Court was pleased to issue NBW on 14.09.2010, pursuant to which, the petitioner had been arrested on 19.10.2020 and he is in custody. He would further submit that the bail granted by this Court has not been cancelled so far. However, this Court taking into consideration the antecedents and the conduct of the petitioner in absconding often had dismissed the earlier petitions and he would submit that the case as on today has been posted for framing of charges on 04.02.2022. Though the other accused are on bail, the petitioner is in habit of absconding and if bail is granted to him, there is every possibility of him absconding again and thereby delaying the progress of trial.

10. Heard the counsel and perused the materials available on record.

11. This Court taking into consideration the antecedents of the petitioner and the conduct of absconding again and again had dismissed the earlier applications for bail. However, this Court while dismissing the earlier application in Crl.OP.No.16336 of 2020 dated 14.10.2020 had directed the respondent/police to secure the other accused or else had directed the trial judge to split up the case against the accused and complete the trial. Though the other absconding accused has been secured and is in Central Prison, Madurai, the respondent has not taken any steps to produce him before the Court. The trial Court despite the direction dated 14.10.2020



had not taken any steps to split up the case. Further, the respondent also not taken any steps to cancel the bail granted by this Court in Crl.OP.No.16106 of 2019 dated 08.07.2019.

12. It is apt to extract the relevant portion of the judgment of the Hon'ble Apex Court in the case of Ashim @ Asim Kumar Haranath v. National Investigation Agency reported in 2021 SCC online SC 1156 :-

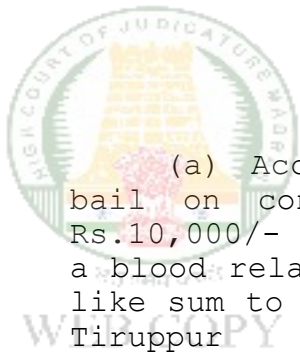
"12. This Court has consistently observed in its numerous judgments that the liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial is imperative and the undertrials cannot indefinitely be detained pending trial. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the Courts would ordinarily be obligated to enlarge him on bail.

13. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice."

13. In this case, the petitioner has been arrested on 09.06.2020 pursuant to a NBW issued by the trial judge on 08.01.2020. Subsequently, the petitioner had moved several applications, this Court taking into consideration that seven other cases of serious nature are pending against the petitioner had dismissed the bail applications. However, during the last dismissal on 14.10.2020, this Court had directed the respondent to secure the absconding accused or else had directed the trial Court to split up the case against the petitioner and to conclude the trial. The respondent despite arrest of A5 and he being confined at Madurai Central Prison had not taken any steps to produce him before the trial Court. The trial Court had not complied with the direction of splitting up the case against the petitioner.

14. Subsequent, to the dismissal on 14.10.2020 there is no progress in trial. The accused had suffered incarceration for a sufficient period of time and this Court is of the opinion that the continuous incarceration from 09.06.2020 is unduly long. The petitioner cannot be faulted for delay in the trial and bail granted to the petitioner by this Court in Crl.OP.No.16106 of 2019 dated 08.07.2019 has not been cancelled so far.

15. In view of the above, this Court is inclined to grant bail to the petitioner subject to the following conditions :-



(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute a fresh bail bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties one shall be a blood relative and other shall be a Government Servant, each for a like sum to the satisfaction of the learned Principal Sessions Judge, Tiruppur

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Judge may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner shall appear before the trial Court daily at 10.30 a.m. until completion of trial in SC.No.108 of 2018. [if the petitioner has to appear for trial before any other Court, he has to intimate the trial Court in advance.]

(d) the petitioner shall not commit any offences of similar nature;

(e) the petitioner shall not abscond either during trial;

(f) the petitioner shall not tamper with evidence or witness during or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/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 learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];

(h) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

(i) The Trial Court shall proceed further with the trial on a day to day basis in accordance with the guidelines given in Vinod Kumar V. State of Punjab - AIR 2015 SC 1206.

(k)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 Uttat Pradesh v. Shambhu Nath Singh - JT 2001 (4) SC 319.



16. With the above directions, this Criminal Original Petition stands ordered.

-sd/-

24/01/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SESSIONS JUDGE,
TIRUPPUR

2 THE INSPECTOR OF POLICE,
AVINASHIPALAYAM POLICE STATION,
TIRUPPUR DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

4 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

CC to M/S.A.P.SATHIYAMOORTHY Advocate on payment of necessary charges Sr.1125

CRL OP.21286/2021

Date :24/01/2022

RVR 25/01/2022