



Crl.O.P.No.32505 of 2022

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A.A.NAKKIRAN, J.

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offence under Sections 379, 430 of IPC read with 21(1) of Mines and Minerals Act in Crime No.134 of 2019 and in PRC No.107 of 2022, on the file of the learned Judicial Magistrate No.II, Virudhachalam, seeks anticipatory bail.

2. The case of the prosecution is that the petitioner is facing trial for the offence under Sections 379, 430 of IPC read with 21(1) of Mines and Minerals Act in Crime No.134 of 2019 and in PRC No.107 of 2022, on the file of the learned Judicial Magistrate No.II, Virudhachalam, since did not appear before the Court on 13.09.2022, non-bailable warrant was issued against him.

3. The learned counsel appearing for the petitioner submits that since the petitioner due to serious illness, he could not appear before the concerned Court on 13.09.2022 and hence non-bailable warrant was issued against him. However, his non appearance is neither wilful nor wanton.

4. The learned Government Advocate (Crl.side) submits that since the petitioner did not appear before the Court on 13.09.2022, non-bailable warrant was issued against him and it is pending. He would further submit



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that he is still absconding and if he is granted anticipatory bail, he will abscond in future also and hence, he would oppose for granting anticipatory bail to him.

5. In view of the above position, this Court is of the opinion that the relief available to the petitioner is to surrender before the learned Magistrate concerned and to file a petition under Section 70(2) of Cr.P.C. to recall the Non-Bailable Warrant of Arrest issued against him.

6. Considering the fact that non-bailable warrant is pending against the petitioner, the petitioner is directed to surrender before the trial Court i.e., learned Judicial Magistrate No.II, Virudhachalam, and file a petition under Section 70(2) of Cr.P.C., to recall the non-bailable warrant. On filing of such petition, the concerned Magistrate is directed to consider the said petition on merits and pass orders on the same day.

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

28.12.2022

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