



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.14893 of 2023

S.Malar Selvam

...Petitioner

-Vs-

Mr.D.Sudhakar

..Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 22.06.2023 passed in Crl MP No.14316 of 2023 by the learned Principal District and Sessions Court, Chennai.

For Petitioner : Mr.D.Vijayan

For respondents : Mr.A.Damodharan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Principal District and Sessions Judge, Chennai in Crl.MP.No.14316 of 2023 dated 22.06.2023, dismissing the application filed by the petitioner for



suspending the sentence.

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2. The petitioner was convicted for an offence under Section 138 of the Negotiable Instrument Act by the Metropolitan Magistrate, Fast Track Court I, Egmore, Chennai in STC No.7235 of 2022 by an order dated 16.05.2023. The petitioner was sentenced to undergo one year simple imprisonment and to pay the cheque amount as compensation within one month. On the day when the judgement was pronounced, the petitioner was not present before the Court and hence, a non-bailable warrant was issued against the petitioner by the learned Magistrate.

3. Aggrieved by the order passed by the Magistrate, the petitioner filed an appeal before the Principal District and Sessions Judge, Chennai in Crl A.No.344 of 2023. In the said appeal, the petitioner filed an application seeking for suspension of sentence pending disposal of the appeal. The Appellate Court by an order dated 22.06.2023, dismissed the application on the ground that the petitioner was not present before the Magistrate



Court on the date of the judgement and a non-bailable warrant has been issued against him and that the petitioner had not surrendered either before the Magistrate or before the Appellate Court and hence, the appellate Court proceeded to dismiss the petition directing the petitioner to surrender and to seek for a regular bail. Aggrieved by the same, the present Criminal Original Petition has been filed before this Court.

4. The learned counsel for the petitioner submitted that there was lack of communication between the counsel and the petitioner and infact, the petitioner was present before the Appellate Court on the date of hearing. It was further submitted that the petitioner is willing to surrender before the Appellate Court and the learned counsel requested this Court to direct the Appellate Court to consider the bail petition on the same day and pass orders.

5. In the considered view of this Court, the petitioner ought to have surrendered atleast before the Appellate Court



and must have sought for a regular bail since he has been convicted and sentenced and a nonailable warrant has been issued against the petitioner for securing him to undergo the sentence. In view of the same, the petitioner cannot merely file a petition for suspension of sentence even without surrendering before the Appellate Court.

6. Considering the facts and circumstances of the case, this Court is inclined to dispose of this Criminal Original petition in the following terms :-

- (a) The petitioner is directed to surrender before the V Additional City Civil Court, Chennai on or before 10.07.2023.
- (b) The petitioner shall file a bail petition before the concerned Court at the time of surrendering.
- (c) The petitioner shall deposit 20% of the cheque amount within a period of two weeks from today.
- (d) The V Additional City Civil Court, Chennai, shall



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grant an interim bail to the petitioner and shall ensure that the petitioner deposits 20% of the cheque amount within the time stipulated by this Court.

(e) If the petitioner deposits 20% of the cheque amount as directed by this Court, the Appellate Court shall proceed further to pass an order granting regular bail by imposing necessary conditions.

and

(f) If the petitioner fails to deposit 20% of the cheque amount within the time stipulated by this Court, the Appellate Court shall proceed further to cancel the interim bail and secure the petitioner to undergo the sentence imposed by the Trial Court.

6. This Criminal Original Petition is disposed of in the above terms.

05.07.2023

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Index : Yes/No

Internet : Yes/No

Note : Issue order copy on 06.07.2023



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N.ANAND VENKATESH, J.

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To

1. Principal District and Sessions Court, Chennai.
2. Metropolitan Magistrate, Fast Track Court I, Egmore, Chennai
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.14893 of 2023

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