



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2023

PRESENT

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**CRL.O.P (MD)No.712 of 2023

WEB COPY

Elwin Jesudoss

...Petitioner/ Petitioner

-vs-

The State represented by
The Inspector of Police,
Economic Offence Wing-2,
Nagercoil Police Station,
Kanyakumari District.
(in Cr.No.7 of 2002)

...Respondent/ Respondent

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C, praying to direct the learned Judicial Magistrate No.2, Nagercoil to permit the petitioner to withdraw the deposited amount for a sum of Rs.4,00,000/- which was deposited as per the conditional order passed by this Court in Crl.O.P.No.27127 of 2002, dated 08.11.2002.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

ORDER

This petition has been filed to direct the learned Judicial Magistrate No.2, Nagercoil to permit the petitioner to withdraw the deposited amount for a sum of Rs.4,00,000/- which was deposited as per the conditional order passed by this Court in Crl.O.P.No.27127 of 2002, dated 08.11.2002.

2.The learned Counsel for the petitioner would submit that the petitioner along with other accused were arrayed as accused in Cr.No.7 of 2002 registered by the respondent Police for the offences punishable under Sections 409, 420 and 120B IPC. The petitioner along with other accused filed a petition for anticipatory bail in Crl.O.P.No.27127 of 2002 before this Court and this Court while granting anticipatory bail, dated 08.11.2002, had directed them to deposit a sum of Rs.4,00,000/- to the credit of crime number before the learned Judicial Magistrate No.II, Nagercoil. Pursuant to the same, the petitioner has also deposited the said amount on 20.11.2002 and subsequently, the case against the four other accused



was split up in C.C.No.44 of 2003 and the case in respect of the petitioner was split up in C.C.No.15 of 2004.

3.He would also submit that the four other accused were convicted by the trial Court in C.C.No.44 of 2003 vide order, dated 03.06.2005, whereas, since the petitioner has settled all the depositors, the petitioner was acquitted in C.C.No.15 of 2004 by order, dated 24.05.2018. Subsequently, the other accused have also filed an appeal as against the conviction and sentence and the Appellate Court taking into consideration the fact that the depositors have been settled, had acquitted the other accused also.

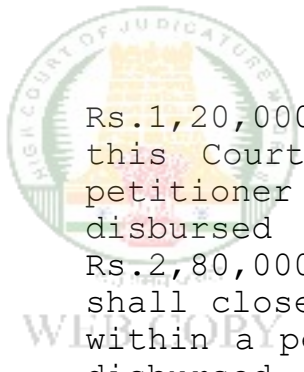
4.He would further submit that now, the entire amount of Rs.4,00,000/-, which is lying as deposit on the file of the learned Judicial Magistrate No.II, Nagercoil, has to be returned to the petitioner and thereby, this petition has been filed seeking for a direction for return of the said amount. However, he would submit that on the earlier occasion, the respondent Police has brought to the knowledge of this Court that one Pangras, who is also a depositor, has to be settled an amount of Rs.2,85,119/- and the petitioner and the other accused have no objection in settling the amount of Rs.2,85,199/- to the said Pangras and this Court had also directed the petitioner to file an affidavit of undertaking that the amount of Rs.2,80,000/- may be disbursed to the said Pangras.

5.Pursuant to the same, the petitioner has also filed an affidavit of undertaking today before this Court and the learned Counsel for the petitioner would submit that the learned Judicial Magistrate No.II, Nagercoil may be directed to return the amount of Rs.1,20,000/- to the petitioner and the balance of Rs.2,80,000/- may be disbursed to the depositor, Pangras.

6.The learned Government Advocate (Crl.side) would submit that the petitioner and the other accused have settled all the other depositors and only an amount of Rs.2,80,000/- remains to be paid to one of the depositors, namely, Pangras. He would also submit that in the event of Rs.2,80,000/- being returned to the said Pangras, the respondent Police have no objection in closing the complaint of the said Pangras.

7.Heard and perused the materials available on record including the affidavit of undertaking filed by the petitioner.

8.Considering the facts and circumstances of the case and also considering the affidavit of undertaking filed by the petitioner that he has no objection for the learned Judicial Magistrate No.II, Nagercoil in disbursing the amount of Rs.2,80,000/- to the said depositor, Pangras and returning the balance amount of Rs.1,20,000/- to the petitioner, this Court is inclined to partly allow this petition. Accordingly, this petition stands partly allowed by directing the learned Judicial Magistrate No.II, Nagercoil to return



Rs.1,20,000/-, which has been deposited pursuant to the order of this Court in Crl.O.P.No.27127 of 2002, dated 08.11.2002 to the petitioner and the balance amount of Rs.2,80,000/- shall be disbursed to one of the depositors, Pangras. In the event of Rs.2,80,000/- is being disbursed to the said Pangras, the respondent shall close the complaint of the said Pangras against the petitioner within a period of two weeks from the date on which, the amount is disbursed.

sd/-
20/02/2023

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/ 03 /2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

cmr

To

- 1.The Judicial Magistrate No.II, Nagercoil.
- 2.-do-Through The Chief Judicial Magistrate,
Kanyakumari at Nagercoil.
- 3.The Inspector of Police,
Economic Offence Wing-2,
Nagercoil Police Station,
Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1. CC to M/S.M.P.Senthil Kumar, Advocate SR.No.9390 (F)

ORDER
IN
CRL OP (MD) No.712 of 2023
Date :20/02/2023

VA/VS/SAR-II (03/03/2023) 3P 6C