



CRL OP(MD). No.14870 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 14/08/2023

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

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Vallinayagam,

... Petitioner/ Accused No.1

Vs

State Rep.by
The Inspector of Police,
Kottar Police Station,
Nagercoil,
Kanyakumari District.
Crime No.213 of 2023..

... Respondent/ Complainant

For Petitioner : M/s.Henri Tiphagne, Advocate.

For Respondent : Mr.B.Nambiselvan,
Additional Public Prosecutor

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

For Bail in Crime No.213 of 2023 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/ Accused No.1 herein, who was arrested on 27.07.2023 for the



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alleged offence under Sections 186, 448 & 353 of IPC, in Crime No.213 of 2023, on the file of the respondent police, seeks bail.

2.The case of the prosecution in brief:

The defacto complainant is the Head Clerk attached to the Principal District Court, Kanniyakumari. She has stated in the complaint that on 27.07.2023 at about 12.00 noon, the petitioner herein stating that he is disabled person started visiting and inspecting the Courts as to whether the facilities have been provided for such people like him. He entered into the Family Court Hall when the Court proceedings were going on, involved in wordy quarrel with the Presiding Officer. Similarly, he has also made entry into several Court Offices. Because of his forcible entry, picking up quarrel with Presiding Officer, caused inconvenience to the public and also officials. The officials were prevented from discharging their official duty. On the basis of the above, the complaint has been lodged and the case has been registered on 27.07.2023. On the same day itself, he was arrested and remanded into judicial custody.

3. Seeking bail, he moved the learned Judicial Magistrate No.II, Nagercoil on 02.08.2023, that came to be dismissed on the same day, considering the conduct of the petitioner. Again he moved the Principal District Judge, by way of filing Crl.M.P.NO.4208 of 2023, that was also came to be dismissed on 08.08.2023,



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concurring with the view taken by the Magistrate. Upon which the present petition has been filed by the petitioner.

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4.At the time of taking the matter for hearing, the learned counsel on record was not present. But his representing counsel was heard and after hearing, the learned Additional Public Prosecutor, order was passed granting bail to the petitioner considering his physical disability condition. After some time, the counsel on record came to the Court and wanted to make some submissions before this Court for making some observations. On that ground, he was heard.

5.Section 40 of the Rights of Persons with Disabilities Act, 2016, reads as follows:

“40.Accessibility:- The Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment transportation, information and communications, including appropriate technologies and systems and other facilities and services provided to the public in urban and rural areas.”

6.The learned counsel for the petitioner submitted that the petitioner is a



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disabled person suffering from 90% disability. To show this, he has also produced the Unique Disability ID Card issued by the Government, which shows that the petitioner is 90% disabled person. Now as to the purpose of his visit to the Court, I made enquiry with him as well as the respondent police, who is present before the Court. The learned counsel for the petitioner would submit that only to see whether any facility has been made in the Court premises for the convenience of the disabled persons like him as per Section 40 reads above, he entered into the Court premises and visited various places. At that time, he was called and insulted by mentioning his physical disabled condition. This irritated him. Because of that only, he entered into the Court Hall of the Family Court and entered into the wordy altercation with the Presiding Officer. Except that there was no purpose for him either to tress pass into the office rooms or the Court Hall. According to him, now doubt, he has created unnecessary inconvenience to the Presiding Officer of the Family Court. But, for that, the way in which he has been treated, according to him, totally inhuman and lack of sensitivity to his physical condition.

7.The learned counsel for the petitioner further referred to the Judgment of the Honourable Supreme Court passed in the case of Arnesh Kumar Vs. State of Bihar and another reported in (2014) 8 SCC 273. According to him, absolutely, there was no necessity or compelling situation for the learned Judicial Magistrate to order



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remand. He ought to have exercised the discretion in appropriate manner and ought to have refused the remand itself.

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8.The substance of his argument is that the offence of this nature does not require any judicial custody. Atleast, the remanding Magistrate ought to have taken into consideration his physical condition. That was not done. The bail application that were presented by the petitioner were not properly considered with a sensitivity to the physical condition of the petitioner, which ought to have been taken into account. So according to him, for violating the guidelines passed by the Honourable Supreme Court in the above said Arnesh Kumar's case, not only the remanding Magistrate, but also the Judicial Officers, who passed the dismissal orders must be proceeded in accordance with law.

9.He also referring to the physical disabilities of the petitioner by reading the medical records. He would also further submit that after remand another case was also registered against him as if he caused damages to the foot steps of an ATM Centre. But, the FIR copies are not available right now. But, he would submit that the main purpose for visiting the ATM Centre is to see whether the facility has been made available. In that event, he alleged to have caused damage to the foot steps. So according to him, this was also not taken appropriate care by the authorities concerned. In stead of making arrangement for the use of disabled persons, without



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sensitivity, they have reconstructed the foot steps. According to him, absolutely, there was no intention on his part to cause any inconvenience, to commit offence or make nuisance. The purpose, for which, he made visit ought to have been taken by the authorities concerned, in a rightful manner.

10. But when such sort of argument advanced before me I enquired whether his unruly behaviour inside the Court Hall and damaging the ATM Centre can be justified by his genuine purpose and object. No doubt that object may be genuine. But, the manner in which he has behaved must also be properly investigated and tried and if proved, must be punished. There can be no second opinion on this. The petitioner cannot be permitted to take advantage of his physical disability, enter anywhere, any time causing nuisance, disturbances and damage. So law will take its own course, if such unruly behaviour has been exhibited by him. Suffice to say that this petitioner is equally responsible for the undesired consequences. But, at the same time, considering the physical condition of the petitioner, I am of the considered view that releasing him on bail ought to have been considered at the time of remand itself. Because he is suffering from 90% disability and in the prison, even to use toilets, there is no facility for such disabled persons. The learned counsel for the petitioner also brought to the notice of this Court that even toilet facilities are not suitable for the disabled persons. So only on noting the disabled condition of the



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petitioner only, as stated above, at the time of hearing itself, bail was granted to the petitioner by this Court.

11.The learned counsel for the petitioner wants this Court to make an observation that remanding Magistrate must follow the guidelines imposed by the Honourable Supreme Court in Arnesh Kumar's case. No such second direction is required. The law declared by the Honourable Supreme Court is the law of the land and binding upon every one as per the Article 142 of the Constitution of India.

12.With this above discussion, this criminal original petition is allowed and considering the fact that the petitioner is a physically challenged person, he is ordered to be released on bail on executing own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), to the satisfaction of the Superintendent, Sub Jail, Nagercoil. No condition is imposed upon him.

sd/-

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17/08/2023

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

INDU

TO

1 THE INSPECTOR OF POLICE, KOTTAR POLICE STATION,
NAGERCOIL, KANYAKUMARI DISTRICT.

2 THE SUPERINTEDENT, SUB JAIL,
NAGERCOIL, KANNIYAKUMARI DISTRICT.

<https://www.mhc.tn.gov.in/judis>



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3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

1 THE JUDICIAL MAGISTRATE NO.II, NAGERCOIL.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANNIYAKUMARI DISTRICT AT NAGERCOIL.

+1 CC to M/s.R.KARUNANIDHI, Advocate (SR-12281[I] dated 14/08/2023)

ORDER IN
CRL OP(MD) No.14870 of 2023
Date :14/08/2023

PKP/ /SAR- /17.08.2023/ 8P/ 7C

Madurai Bench of Madras High Court is issuing certified
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