

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.2508 of 2023

ORDER:

Seeking pre-arrest bail, the present Criminal Petition is filed under Section 438 Cr.P.C. on behalf of the petitioner, who is arrayed as accused No.1 in S.C.No.25 of 2018 that is pending on the file of the Court of Principal District and Sessions Judge, Sircilla.

2. Heard Sri N.Avaneesh, learned counsel for the petitioner, as well as learned Additional Public Prosecutor who is representing respondent No.1-State. Despite of service of notice upon the defacto complainant i.e., respondent No.2, none represents.

3. Making his submission, learned counsel for the petitioner contends that the petitioner was arrested and was enlarged on bail. Subsequently, no summons were served upon the petitioner on committal of the case and therefore, he was unaware of the proceedings that were pending against him. Learned counsel submits that later, the petitioner came to know that non-bailable warrant was issued against him and the same is pending. Learned counsel also states that in

case, the petitioner is arrested on execution of non-bailable warrant, he would be remanded to judicial custody and therefore, anticipatory bail may be granted.

4. Contrary submission is made by the learned Additional Public Prosecutor. Learned Additional Public Prosecutor contends that when a non-bailable warrant was issued, it is obligatory on part of the petitioner to approach the competent court and move an application for recalling the non-bailable warrant, but he cannot invoke Section 438 Cr.P.C. for grant of anticipatory bail. Learned Additional Public Prosecutor also states that no petition is filed seeking for quashment of non-bailable warrant.

5. Having considered the submissions made, this Court is of the view that the proper course that has to be taken by the petitioner is to move an application before the competent court seeking for recall of the non-bailable warrant. The petitioner cannot be granted the relief of anticipatory bail. Therefore, this court considers it desirable to dispose of this Criminal Petition, however, directing the petitioner to approach the competent court.

6. Resultantly, this Criminal Petition is disposed of with the following directions:-

- (i) The petitioner shall make his appearance before the competent court and move an application for recall of non-bailable warrant.
- (ii) The competent court i.e., the Court of Principal District and Sessions Judge, Sircilla, is directed to pass appropriate orders in case such an application for recall of the non-bailable warrant is filed by the petitioner, basing on the merits of the said application, on the same day.

Dr. JUSTICE CHILLAKUR SUMALATHA

23.3.2023
DR