



Crl.O.P.No.1757 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.1757 of 2024

Prathmesh Prasad Madye

... Petitioner

Vs.

The State rep.by
Inspector of Police,
DCB Police Station,
Tiruppur.
Cr.No.11/2023

..Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order in Crl.M.P.No.87 of 2024 on Principal Sessions Judge, Tiruppur, dated 12.01.2024.

For Petitioner : Mr.Lalit Valecha
for Mr.J.Franklin

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below in Crl.M.P.No.87 of 2024 dated 12.01.2024 wherein the



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Court below while allowing the petition, directed the petitioner to furnish bank guarantee to the tune of Rs.3 crores as a condition precedent to enlarge the petitioner on bail and further directed the Investigation Officer to defreeze the bank account.

2. When the matter came up for hearing on 01.02.2024, this Court passed the following order:

"Mr.A.Damodaran, learned Additional Public Prosecutor takes notice on behalf of the respondent.

2.On carefully going through the order passed by the Court below, it is seen that the Court below has merely gone by the undertaking and the memo that was filed by the counsel appearing for the petitioner to the effect that they will provide a bank guarantee for a sum of Rs.3 Crores and has allowed the bail petition only based on such undertaking. The learned counsel for the petitioner submitted that no such undertaking or no such memo was filed before the Court below.

3.In the light of the above stand taken by the learned counsel for the petitioner, there shall be a direction to the learned Principal Sessions Judge, Tiruppur to submit a report as to whether there was any undertaking given and memo filed on the side of the petitioner undertaking to provide/furnish bank guarantee to the tune of Rs.3 Crores. On receipt of the report, this Court will pass further orders in this petition.4.Post this case for hearing on 08.02.2024.

5.The Registry shall follow up and get the report before the next date of hearing."



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3. When the matter was taken up for hearing today, the report of the Principal District Judge, Tiruppur, was placed before this Court. The relevant portions in the report are extracted hereunder:

"The counsel Mr.Lalit Velacha who represented the petitioner appeared from Mumbai through video conference on 12.01.2024 and during hearing he had submitted that he would instruct the petitioner through his relatives to file a memo undertaking to furnish bank guarantee to the tune of Rs.3 crores and on recording such undertaking given by the counsel for the petitioner through video conference undertaking that the memo would be filed in the due course on that day orders were dictated in the open court on 12.01.2024 to that effect that "the learned counsel for the petitioner conceded certain facts that in the event if the petition is allowed the furnished bank guarantee for Rs.3 crores subject to the satisfaction of the Judicial Magistrate No.II, Tiruppur. The Investigating Officer should defreeze all the accounts which he had already freezed, the petitioner would abide by any condition imposed. By recording the said undertaking and the memo being filed by the petitioner counsel, the Court is inclined to consider the bail application.

Since, the date of hearing happens to be Friday, the last working day, prior to pongal holiday and there were heavy postings of bail applications on that day and the counsels were pressing for bail early release of orders due to the intervening of pongal holiday. Taking advantage of the huge number of bail applications being posted and pongal celebration going on from the evening in the Combined Court buildings arranged by the Bar Association, Tiruppur with the staff members and judicial officers. The petitioner counsel who appeared through video conference assisted by a local counsel Tr.P.V.Prakash had not filed the memo of undertaking which he had undertaken to file before the Court and the same was not noticed by the steno who was under the impression that the memo would have been filed in the



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section as undertaken. Therefore, orders were signed and issued to the parties concerned. Taking advantage of the non-filing of the memo which was undertaken by the petitioner counsel, now it is reported before the Hon'ble High Court that no such undertaking was given and no such memo was filed before this Court.

I submit that the Deputy Superintendent of Police, DCP Police Station appeared in person who was instructed by the Court that on such bank guarantee being furnished, the accounts should be defreezed, which had been conceded by the Deputy Superintendent of Police on the assurance given by the petitioner counsel in furnishing the bank guarantee. On behalf of the intervenor / defacto complainant Tr.S.Ramamoorthy appeared who had filed intervenor application and on the undertaking given by the petitioner counsel, that memo would be filed along with bank guarantee, he also agreed for the condition imposed while passing orders for granting bail to the petitioner. The public prosecutor who was also present during the hearing also conceded for the said arrangement. Only after hearing the petitioner counsel through video conference, after hearing the public prosecutor, defacto complainant, deputy superintendent of police who appeared, orders were passed. Now, in order to take advantage of the fact that memo was not filed on the particular day, now counsel had reported the matter before the Hon'ble High Court as such there was no undertaking, no memo filed before the Court below. The statement made by the petitioner in the Crl.O.P. hearing before the Hon'ble High Court is totally false and made with the sole object of obtaining bail orders suppressing the event that had happened before the Principal District Court."

4. The above report given by the Principal District Judge, Tirupur, was also brought to the knowledge of the learned counsel who appeared through video conferencing platform from Mumbai. The learned counsel



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reiterated that no such undertaking was given by filing a memo. The learned counsel further submitted that even assuming that such an undertaking was given by the counsel, the matter was argued on merits. Therefore, the Court below ought to have passed orders on merits.

5. In the considered view of this Court, the proceedings that had taken place before the Court below is only within the knowledge of the concerned Judge and the counsel who appeared before the Court below. This Court has now received the report of the learned Principal District Judge, Tirupur and this Court does not find any ground to disbelieve the same.

6. Ultimately, the learned counsel for the petitioner is going back on the undertaking and contended that the petition has to be dealt with only on merits. Unfortunately, the Court below did not consider the application on merits and the application was considered only based on the undertaking that was given.

N.ANAND VENKATESH, J.

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7. In the light of the above discussion, it is left open to the petitioner to file a fresh application before the Court below and argue the



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said application on merits. The Court below shall deal with the application on its own merits and in accordance with law and shall pass orders within a period of one week from the date of filing of the fresh application before the Court below. Except giving this liberty, this Court is not inclined to interfere with the order passed in Crl.M.P.No.87/2024, dated 12.01.2024.

Accordingly, this Criminal Original Petition is disposed of.

09.02.2024

Index : Yes/No
Internet : Yes/No
Speaking/Non-Speaking Order
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To

1. Inspector of Police,
DCB Police Station,
Tiruppur.

2. The Public Prosecutor,
High Court, Madras.

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