



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.1743 of 2024

Mutta Kan Prabu @ Prabu

...Petitioner

Vs.

State Rep. by
The Inspector of Police,
Annadhanapatti Police Station,
Salem City.
(Crime No.218 of 2014)

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order of conviction dated 31.07.2023 made in S.C.No.231 of 2015 on the file of Principal Assistant Sessions Judge, Salem and enlarge the petitioner on bail, pending disposal of the C.A.No.150 of 2023 on the file of III Additional District and Sessions Judge, Salem.

For Petitioner : Mr.K.Kalaikovan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This criminal original petition has been filed challenging the order passed by the Court below in CrI.M.P.No.2536 of 2023 in C.A.No.150 of 2023 dated 05.09.2023, dismissing the application filed by the petitioner seeking for enlargement on bail.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondent.

3.The petitioner who was arrayed as A1 underwent trial before the Principal Assistant Sessions Judge, Salem in S.C.No.231 of 2015 for offence under Sections 392, 397 and 506(ii) of IPC. The Trial Court by judgment dated 31.07.2023, convicted the petitioner (A1) for offence under Section 392 of IPC and sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.3,000/- and in default to undergo six months simple imprisonment. On the date when the judgment was pronounced, the petitioner was secured and was remanded to judicial custody to undergo the sentence. Aggrieved by the above judgment, the petitioner filed an appeal before the learned III Additional District and Sessions Judge, Salem in C.A.No.150 of 2023. Along with the



appeal, the petitioner also filed CMP No.2536 of 2023, seeking for bail. The Court below by an order dated 05.09.2023, dismissed the application. Aggrieved by the same, the present criminal original petition has been filed before this Court.

4.The respondent has filed a counter. The respondent has taken a stand that the offence was proved before the Trial Court beyond reasonable doubt and considering the seriousness of the offence, the Court below had rightly dismissed the bail application. The respondent has also given the list of previous cases that were registered against the petitioner. Out of five previous cases, the petitioner has been acquitted in two cases. The petitioner has paid fine in two other cases and as on today, there is one case pending in S.C.No.150 of 2016 before the Principal Sessions Judge, Salem. The respondent has vehemently opposed grant of bail to the petitioner.

5.The learned counsel for the petitioner submitted that the prosecution mainly relied upon the evidence of PW1, PW4 and PW5. Their evidence is contradicting each other and in the present case, there is no credible evidence available to rope in the petitioner as an accused. The learned counsel submitted that the very identity of the petitioner is in question and the petitioner has



already undergone imprisonment for nearly seven months from the date of the judgment passed by the Trial Court. Hence, the learned counsel pleaded for enlargement of the petitioner on bail subject to any conditions imposed by this Court.

6.This Court has carefully considered the submissions made on either side and also the materials available on record.

7.On carefully going through the evidence of PW1, PW4 and PW5 and also the judgment passed by the Trial Court, this Court finds that there are some arguable points in favour of the petitioner in the criminal appeal. That apart, the petitioner has undergone seven months imprisonment after the judgment was passed by the Trial Court. There is only one previous case against the petitioner pending in S.C.No.150 of 2016 before the Principal Sessions Judge, Salem .

8.In the facts and circumstances of the case, this Court is inclined to enlarge the petitioner on bail by putting him to certain conditions. Accordingly, the order passed by the Court below in CrI.M.P.No.2536 of 2023, on the file of the learned III Additional District and Sessions Judge, Salem, is hereby set aside.



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9. In the light of the above discussion, this Court is inclined to enlarge the

petitioner on bail subject to the following conditions:

- i. The petitioner shall be released on bail, on he executing a bond for a sum of Rs.10,000/-(Rupees Ten Thousand Only), with two sureties (out of which one surety must be a blood relative), each for a like sum to the satisfaction of the Principal Assistant Sessions Judge, Salem and on further conditions that:
- ii. the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.
- iii. the petitioner shall report before the III Additional District and Sessions Judge, Salem, daily at 10.30 a.m., until further orders including the dates on which the case is posted for hearing. The only exception is when the petitioner attend for the hearing before the Principal Sessions Judge, Salem in S.C.No.150 of 2016.
- iv. the petitioner shall not abscond either during investigation or trial.



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v. the petitioner shall not tamper with evidence or witness during trial.

vi. On breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in the case of ***P.K.Shaji vs. State of Kerala*** reported in [(2005) AIR SCW 5560].

vii. if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

20.02.2024

Index: Yes/No
Speaking order/Non-speaking Order
Neutral Citation: Yes/No
ssr

Note: Issue Order Copy on 21.02.2024



To

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1. The Principal Assistant Sessions Judge, Salem.
2. The III Additional District and Sessions Judge, Salem.
3. The Inspector of Police,
Annadhanapatti Police Station,
Salem City.
4. The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH, J

SSR

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