



CrI.O.P.(MD) No.1058 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2024

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THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.1058 of 2024

Hakkem

...Petitioner

VS

**The Inspector of Police,
Sethubavachathiram, ,
Thanjavur District.
Crime No.206 of 2015**

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to direct the Learned District Munsif cum Judicial Magistrate, Peravoorani, Thanjavur District to recall the non Bailable Warrant issued against the petitioner in P.R.C.No.6 of 2022 pending on the file of the Learned District Munsif cum Judicial Magistrate, Peravoorani, Thanjavur District in Crime No.206 of 2015 on the file of the respondent police within the time stipulated by this Court.

For Petitioner : Mr.K.M.Karunakaran

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



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ORDER

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This Criminal Original Petition is filed to direct the learned District Munsif cum Judicial Magistrate, Peravoorani, Thanjavur District to recall the non Bailable Warrant issued against the Petitioner in P.R.C.No.6 of 2022 in Crime No.206 of 2015 on the file of the Respondent.

2.The learned Counsel for the Petitioner submits that the Petitioner was issued with non bailable warrant in PRC.No.6 of 2022 pending on the file of the learned District Munsif cum Judicial Magistrate, Peravoorani, Thanjavur District. It is his further submission that the Petitioner may be granted a chance to appear before the learned District Munsif cum Judicial Magistrate, Peravoorani, Thanjavur District and on such appearance, the petition to be filed by the Petitioner shall be disposed of by granting him bail.

3.It is to be noted that P.R.C.No.6 of 2022 indicates that it is a Sessions Case, not triable by the Court of learned Judicial Magistrate. As per the reported ruling of the Hon'ble Supreme Court in the case of



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P.K.Shaji Vs. State of Kerala reported in (2005) AIR SCW 5560, the

Hon'ble Supreme Court had insisted Courts granting bail to insist on the conditions on the accused, Petitioner in the bail petition to cooperate with the pending investigation and also after investigation, to cooperate with the trial Court for trial.

4.In cases before this Court, it is found that the directions issued by the Hon'ble Supreme Court in ***P.K.Shaji Vs. State of Kerala reported in (2005) AIR SCW 5560*** had not been taken note of either by the Members of the Bar, who appear for the accused and seek bail or by the accused themselves or by the Police Officials. For the Investigating Officer, the said ruling of the Hon'ble Supreme Court had indicated that if the accused, who was granted bail, does not comply with the conditions in either cooperating with the investigation or after investigation in not cooperating with the trial Court, the Investigating Officer or the Police Officer concerned shall approach the nearest Judicial Magistrate, who has jurisdiction over the Police Station concerned and seek cancellation of bail, as though the bail was granted by the learned Judicial Magistrate. In spite of giving such discretion to the Police Officer concerned, they had not done so.



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5.The learned Additional Public Prosecutor submits that the case is of the year 2015. PRC.6 of 2022 means, the case against this accused was split up from S.C.No.155 of 2019 to PRC.No.6 of 2022. In support of his submission, the learned Additional Public Prosecutor had relied on the judgment of this Court in the case of ***Pillappan Vs. the Inspector of Police*** reported in ***2018 SCC Online Mad 13298***, wherein this Court had held as under:

“26. To reiterate, Sec. 446-A of the Code was included by the 1980 Amendment in order to curb the menace of bail jumping. It is a trite law that cancellation of bail is not synonymous to cancellation of bail bond and this has been recognised by this Court in [Prabakaran vs. State](#) [2010 (2) MLJ (CrI.) 353], wherein, a learned Single Judge of this Court has held in no uncertain terms as under:

“16. Thus, it emerges tacitly clear that prior to the introduction of Section 446-A, the bail bond shall stand cancelled only when the bail is cancelled either under Section 437 or 439 of the [Criminal Procedure Code](#), whereas, now, such cancellation takes place automatically by operation of [Section 446-A](#) of the Criminal Procedure Code without there being an order of cancellation of bail.”



27. Sec. 446 essentially deals with sureties for breach of bond by the accused, whereas, Sec. 446-A deals with the consequences that would befall the accused himself, upon forfeiture, for breach of bond conditions. That is why, Sec. 446-A begins with the expression ? without prejudice to the provisions of Sec. 446?. This means that, without prejudice to the power of the Court to take action against the sureties under Sec. 446 of the Code, the Court can deal with the accused separately under Sec. 446-A of the Code for breach of bond. When the accused is produced and if he is not able to satisfactorily give reasons as to why he did not appear before the Court, then, the Magistrate/Court is required to record an order of forfeiture and remand the accused to judicial custody under Sec. 309 of the Code. Thereafter, bail is not a matter of right even in a case involving a bailable offence. If the accused is able to give satisfactory reasons for his absence at the time of his production in execution of the non-bailable warrant / appearance, then, there is no necessity to remand him to judicial custody. If the accused seeks time to give his explanation, he can be remanded to judicial custody pending enquiry. The order of forfeiture of bond that has been recorded by the Court will not automatically have any consequence on the sureties under Sec. 446 of the Code, because, a separate notice is required to be given to the sureties to show cause as to why penalty should not be paid by them and only if they are not able to show cause, can the Court proceed to recover the penalty as if it were a fine imposed under the Code. Thus, the consequences of forfeiture of the bond operates differently for the accused and the sureties. The fact that the accused had been in abscondence for a long period and that he has not been



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able to give satisfactory explanation for his absence at the time of his production/appearance, is, by itself, a sufficient ground for forfeiture of the bond. What the Court/Magistrate shall record is, the period of abscondence, explanation given by the accused and the reasons for non acceptance. This, by itself, will complete the forfeiture proceedings qua the accused. Thus, the Magistrate has the option to release the accused on his personal bond with one or more sureties or refuse to release him. If the Magistrate / Court refuses to release the accused, he will have to, perforce, remand him to custody under Sec. 309 of the Code. Thereafter, the accused will have to apply for fresh bail. The accused would have been granted bail in the earlier proceedings judging the gravity of the offence, his antecedents and other factors. In the subsequent bail application, the Court will have to consider an additional factor, viz., the factum of the accused having absconded after availing bail. Thus, the consequences of cancellation of bail and the cancellation of bail bond vis-a-vis the accused are one and the same. Any other interpretation of Sec. 446-A would make it otiose. This Court garners support for this interpretation in the judgment of the Kerala High Court in [Mahesh vs. State of Kerala](#) [2009 SCC Online Ker. 6601].

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30.The aforesaid interpretation will apply in all fours to the interpretation of the word 'may' used in proviso to Sec. 446-A(b) of the Code. A fortiori, the Court / Magistrate may not release him and after recording that the bond has been forfeited since the accused had been in abscondence for a long period and that the reason given by



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him for his abscondence is not satisfactory, the Court / Magistrate can remand him to judicial custody under Sec. 309 of the Code. Thereafter, the accused should have to apply for fresh bail which can be considered on merits by taking into consideration the period of his abscondence and the desirability to grant bail to such a person.”

6.Further, it is submitted by the learned Additional Public Prosecutor that when the accused evaded due process of law for conducting trial, it is always open to the learned Magistrate/Trial Judge concerned as well as the SHO/Investigation Officer concerned to invoke the provisions under Section 446 Cr.P.C., as per the dictum laid down by this Court in *Pillappan's case*. Further, they can very well invoke the provisions of Section 82 Cr.P.C., so that the trial cannot be pending for long years. If stiff action is taken by the Court concerned, there is no question of long pending of warrant against the accused. The accused cannot move once again the bail application without challenging the said order.

7.It is a curse on the victims of crime that the Courts in this country are indifferent to the pain and suffering of the victim of crime, who had lost their near and dear ones in murder cases that the accused in murder cases



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have a free ride and as a piecemeal, the trial is conducted, when every accused is secured one after and other over a period of years when the victim of crime, who had lost their near and dear ones are secured as witnesses at the whims and fancies of the accused, who narrate the past painful incident, which they had forgotten over a period of time, thereby undergoing pain and suffering and mental agony. It had to be put an end to by amending the rules regarding bail and free run of the accused taking the entire criminal justice system as accused friendly and not victim friendly. This is the glaring example of the indifferent attitude of the Courts in India to the sufferings of the victim of crime and witnesses, who are expected to depose in favour of the prosecution narrating the painful experience observing the pain and suffering of the near and dear ones in murder.

8.In the light of this case, this is a apt case, which the ratio laid down by the Hon'ble Supreme Court is attracted, where the trial Courts, learned Magistrate, the prosecution Agencies, the State as well had remained indifferent, as State Authorities, who are expected to act in the interest and welfare of the common citizen of this country guaranteeing peace in the society as per the Constitution of India. As a welfare State, the State



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Officials are expected to function protecting the life and limb of the citizens of this country. Here it is a case, they had remained indifferent ignoring the rulings of the Hon'ble Supreme Court granting the Police Officials the chances to cancel the bail for violation of the bail condition by the accused.

9. Accordingly, this Criminal Original Petition is dismissed. The learned District Munsif cum Judicial Magistrate, Peravoorani, Thanjavur District is directed to detain the accused in Prison cancelling the bail and forfeiting the bond amount from the sureties, who had stood sureties for this accused at the time of grant of bail. The Respondent shall approach the learned District Munsif cum Judicial Magistrate, Peravoorani, Thanjavur District seeking cancellation of bail for other accused, who are absconding. The learned District Munsif cum Judicial Magistrate, Peravoorani, Thanjavur District shall commit the case in PRC.No.6 of 2022 to the concerned Sessions Judge. Thereafter, the Sessions Judge concerned shall proceed with the trial, if all the accused are available.

Internet: Yes./No
Index: Yes/No
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30.01.2024

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To

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- 1.The Inspector of Police,
Sethubavachathiram, ,
Thanjavur District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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