



Crl.O.P.(MD)No.4225 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.4225 of 2024

S.Aravind @ Aravindan

...Petitioner

VS

**State represented by
The Inspector of Police,
DCB, Police Station,
Theni District.**

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to direct the learned Magistrate, Theni to consider the warrant Recall Petition filed under Section 70(2) of Cr.P.C., in connection with a case in C.C.No.605 of 2023 on the file of the Judicial Magistrate, Theni on the file very same day and consequently, to direct the Judicial Magistrate, Theni to obtain sureties to ensure his appearance in future hearing in the criminal case in C.C.No.605 of 2023 on the file of the Judicial Magistrate, Theni as per Section 88 of Cr.P.C.

**For Petitioner : Mr.K.Sathish Kumar
For Respondent : Mr.B.Thanga Aravindh
Government Advocate (crl.side)**



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ORDER

The Criminal Original Petition had been filed seeking a direction against the learned Judicial Magistrate, Theni to consider the warrant Recall Petition filed under Section 70(2) of Cr.P.C., in connection with a case in C.C.No.605 of 2023 on the file of the learned Judicial Magistrate, Theni, on the very same day and consequently, to direct the learned Judicial Magistrate, Theni to obtain sureties to ensure his appearance in future hearing in the criminal case in C.C.No.605 of 2023 on the file of the learned Judicial Magistrate, Theni, as per Section 88 of Cr.P.C.

2.The learned Counsel for the Petitioner submitted that the Petitioner is arraigned as A1. The Petitioner got anticipatory bail by this Court. Since surety had not been produced before the learned Judicial Magistrate, Theni, the anticipatory bail granted by the Court was dismissed. Now, final report had been filed before the Court of the learned Judicial Magistrate and it is taken on file in C.C.No.605 of 2023. The Petitioner had voluntarily surrendered before the Court and offered surety. The leaned Judicial



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Magistrate, Theni did not accept the same stating that he had to obtain anticipatory bail once again.

3.It is to be noted that anticipatory bail was granted to the Petitioner, when the investigation was pending. Now, investigation had been completed and final report had been laid before the Court of the learned Judicial Magistrate, Theni, and taken on file in C.C.No.605 of 2020. Under such circumstances, even if the accused is shown as absconding accused, the Court is duty bound to issue summon and not warrant, thereby, providing an opportunity to the accused to surrender before the Court. Here, in this case, the Petitioner was granted anticipatory bail. Even though he did not execute surety bond and surrender before the Court, the investigation Officer or the Investigation Team had not arrested the Petitioner for the failure to execute the bail bond. Under those circumstances, the learned Judicial Magistrate is within his/her power/discretion to accept the bail and surrender of the Petitioner before the Court, as no purpose will be served by arresting the accused after filing the final report. Therefore, the learned Judicial Magistrate, Theni, is directed to recall the NBW issued against the Petitioner. Also, the learned Judicial



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Magistrate, Theni, is directed to consider the bail, as though granted by the learned Judicial Magistrate after charge sheet had been taken on file. Since the offence is triable by the Magistrate, the Magistrate is within his/her power to grant bail with conditions, as stated in ***P.KShaji vs State of Kerala reported in (2005) AIR SCW 5560*** for the co-operation of the accused for the accused.

In the result, the ***Criminal Original Petition*** is Allowed.

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

18.03.2024

cmr

To

- 1.The Judicial Magistrate, Theni.
- 2.The Inspector of Police,
DCB, Police Station,
Theni District.



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SATHI KUMAR SUKUMARA KURUP, J.

cmr

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