



CRL.OP(MD). No.15767 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.OP(MD). No.15767 of 2023

and

CRL.MP(MD). No. 12538 of 2023

N.A.Varatharajan

... Petitioner

Vs.

1. The State rep by
The Inspector of Police,
City Crime Branch,
Trichy District.
(Crime No.4 of 2012)

2. V.S.Suresh

3.V.S.Kumar

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of order in the memo in C.C.No.154 of 2023 on the file of the learned Judicial Magistrate No.I, Trichy dated 02.05.2023 to set aside the same.

For Petitioner : Mr.T.Venkatesan

For R-1 : Mr.A.Albert James,
Government Advocate



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(Crl. Side)

ORDER

This petition has been filed challenging the order dated 02.05.2023 passed by the learned Judicial Magistrate No.I, Trichy accepting the bond executed by the respondents 2 and 3 (A2 and A3) under Section 88 of CrPc.

2. Heard the learned counsel on either side and perused the materials placed on record.

3. The main grievance that was expressed by the learned counsel for the petitioner is that the respondents 2 and 3 (A2 and A3) moved anticipatory bail petition before this Court. This Court imposed a condition to the effect that they must deposit a sum of Rs.50,00,000/-. This condition was not complied with. An S.L.P. Was also filed before the Apex Court which also came to be rejected. In spite of the same, the police did not choose to arrest A2 and A3 and ultimately, the final report came to be filed before the Court below by showing A2 and A3 as absconding accused. In spite of the same, the 2nd and 3rd respondents



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appeared before the Court and filed a surrender petition and executed a bond under Section 88 of CrPC. The same was allowed by the Court below after bond was executed and sureties were also furnished.

4. In the considered view of this Court, the dismissal of the anticipatory bail petition for non-compliance of the conditions imposed in the anticipatory bail petition, need not necessarily result in the arrest of the respondents 2 and 3, unless the Court has given any such direction.

5. There is a general misconception that once an anticipatory bail petition is dismissed, it can only result in the arrest of the accused person. The power of arrest is within the exclusive domain of the investigation officer. No Court can direct the investigation officer to arrest any one unless the offence involved is very serious and the investigation officer is acting in a biased manner. Even after arrest, the Judicial Magistrate need not mechanically remand the accused and the Judicial Magistrate can refuse remand, if such remand is not warranted in a given case. The law on this issue was discussed in detail by this Court



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in ***State -Vs- Nakeeran Gopal*** reported in ***[2019 1 LW (Crl.) 26]***.

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6. In the instant case, the anticipatory petition filed by the respondents 2 and 3 was dismissed. The investigation officer did not think it fit to arrest the 2nd and 3rd respondents. The final report has been filed before the Court below and the case is now at the stage of trial. The Court below has rightly directed the 2nd and 3rd respondents to execute a bond under Section 88 of CrPC. If ultimately, the 2nd and 3rd respondents (A2 and A3) do not appear or drag on the trial, this bond can always be cancelled and they can be arrested by the Court by issuing a NBW. The bond is executed only for the purpose of ensuring that the accused persons are present before the Court during the hearing and they do not drag on the proceedings.

7. In fine, there is no ground to interfere with the order passed by the Court below on 02.05.2023.

8. This Criminal original petition is disposed of with the direction to the learned Judicial Magistrate No.I, Trichy to dispose of C.C.No.154



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of 2023 within a period of 6 months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

21.11.2024

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

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To

1. Judicial Magistrate No.I, Trichy.
2. The Inspector of Police,
City Crime Branch,
Trichy District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH,J.

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Order made in
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21.11.2024