



CRL OPMD)No.14672 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 24.09.2024

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

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Muthu Esaki @ Vaganam

... Petitioner / Sole Accused

Versus

1.The State

Represented by the Inspector of Police,
Sivagiri Police Station,
Tirunelveli District.
[Crime No.173 of 2016]

(*)2.The Superintendent of Police,
Tenkasi

(*)R2 is suo-motu impleaded as per order
of the Court dated 24/09/2024 in
Crl.O.P.(MD).14672 of 2024)

... Respondent/ Complainant

For Petitioner : Mr.Mr.K.Sankar, Advocate

For Respondents : Mr.B.Thanga Aravind
Government Advocate (CrlSide)



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PETITION FOR BAIL UNDER SECTION 483 OF BNSS

PRAYER :-

For Bail in PRC No.31 of 2018 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner accused in Crime No.173 of 2016 on the file of the respondent police for the offence under Section 379 IPC, was arrested pursuant to the Non-Bailable Warrant issued as against him on 31.01.2024 has moved this application seeking bail.

2.The learned Counsel for the petitioner submits that the petitioner, who was arrested on 31.01.2024 is languishing in jail for the past eight months and therefore, prays for allowing this criminal original petition. The learned Counsel further submits that the case has been charge sheeted and the same is pending on the file of the learned Judicial Magistrate, Sivagiri in PRC No.31 of 2018. According to the learned Counsel this case itself is a foisted one to wreak vengeance as against him.

3.This is the 5th bail application filed by the petitioner. The petitioner in order to evade the committal proceedings was absconding and therefore, a non-bailable



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warrant of arrest was issued as against this petitioner by the learned Judicial Magistrate, Sivagiri on 02.01.2020 and he was secured after a period of four years only on 31.01.2024. Considering the conduct of this petitioner by evading the committal proceedings he absconded for a period of four years, this Court rejected the earlier bail applications of this petitioner. This application is moved that the petitioner is languishing in jail for several months. The petitioner has projected that he is the sole accused in the case in Crime No.173 of 2016. The final report in this case appears to have been filed in the year 2018 and the case is pending at the stage of committal proceedings before the Judicial Magistrate, Sivagiri from the year 2018. Considering the fact that the petitioner is very much available in judicial custody from 31.01.2024, this Court is surprised even now the committal proceedings are pending, called for a report from the Judicial Magistrate concerned.

4. Accordingly, the learned Judicial Magistrate has submitted her report dated 12.09.2024 that there are totally 9 accused in PRC No.31 of 2018. Initially A6 did not appear on 26.11.2018 for which, a non-bailable warrant of arrest was issued and it was subsequently cancelled on 21.12.2018. Thereafter on 16.04.2019, A1 was absent and it was recalled by the learned Judicial Magistrate on 06.05.2019. The other accused are also not appearing before the Judicial Magistrate Court. According to the learned Judicial Magistrate, non-bailable warrant of arrest is pending as against A1,

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A4, A5, A6, A7, A8 and A9 from 02.01.2020. It is also stated in the report that the case has been posted to 18.09.2024 and due to the non-appearance of these accused, the committal proceedings are pending.

5.Neither the petitioner, respondent police, nor the learned Judicial Magistrate has informed this Court about the rank of this petitioner / accused in Crime No.173 of 2016. The petitioner has projected that he is the sole accused in this case, which is also not disputed by the respondent Police.

6.The learned Judicial Magistrate claims that totally there are 9 accused in Crime No.173 of 2016. According to her A1, A2, A4 to A7 and A9 are absconding and NBW is pending against them. As per the report of the learned Judicial Magistrate, A6 was absconding from November 2018, for which a non-bailable warrant of arrest was issued. Thereafter A1 was absconding from 16.04.2019 and NBW was issued as against him and it was recalled subsequently.

7.The fact remains that for the incident, which is said to have taken place in the year 2016, final report was filed in the year 2018, taken on file on 18.05.2018 and the same is kept pending without any progress for the past six years. Even according to the learned Judicial Magistrate, most of the accused are still absconding and NBWs are pending as against them. It is not known when this case would be committed to

the Court of Sessions and when the case would be listed for the trial. While listing for



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the trial, it is not known whether the witnesses would be alive and available for evidence. This is how most of the cases are defeated by the police and the judiciary. Ultimately the poor victims are not getting remedy in the present criminal justice system. At the stage of committal, the Judicial Magistrates are not expected to be liberal in entertaining the petitions to condone the absence of the accused and also by recalling the non-bailable warrant of arrest of co-accused. This liberal attitude of some of the Judicial Magistrates are taken advantage of by accused in evading the trial. The purpose of evading the trial is to defeat the prosecution case and tamper with the witnesses. Entertaining the application under Sections 317 CrPC and under Sections 70(2)CrPC is also encouraging the attitude of the accused. If the case is pending for the appearance of the accused, the concerned Magistrate ought to have taken this issue to the Superintendent of Police or at least to the Deputy Superintendent of Police concerned and ought to have taken steps to execute the NBW. The police officers are also under the impression that their duty is over by filing the final report. The Superintendent of Police are also expected to monitor the pendency of the committal proceedings and the trial in Sessions cases for want of appearance of the accused. They ought to have taken some initiatives to arrest the accused and ensure that the trial is conducted within a reasonable time. By this time the witnesses would have been demoralised and they may not be interested in letting



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in evidence. The respondent police and the Courts are having certain responsibilities to the victims, who are affected in the crime No.173 of 2016. Therefore, this Court is not inclined to entertain this application and accordingly, this criminal original petition is dismissed with the following directions:

i. The Superintendent of Police, Tenkasi is suo motu impleaded as a respondent to this petition and this Court directs the Superintendent of Police to form a special team and to ensure the non-bailable warrant as against the accused in Crime No.173 of 2016 (PRC No.31 of 2018) are executed within a period of one month from the date of receipt of a copy of this order.

ii. The learned Chief Judicial Magistrate, Tenkasi shall monitor the case, also follow it up with the Superintendent of Police and shall ensure that the case is committed within a period of six weeks from the date of receipt of a copy of this order.

iii. The learned Chief Judicial Magistrate is expected to ascertain the performance of the present learned Judicial Magistrate, Sivagiri and if the Chief Judicial Magistrate feels that the learned Judicial Magistrate, Sivagiri is not capable of handling this case, shall transfer the case to some other court and shall ensure that the case is committed as directed by this Court above.

iv. The Superintendent of Police is expected to take appropriate action as against



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the officers concerned, who have failed to execute the non bailable warrant as against the accused for the past several years.

sd/-
24/09/2024

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/ 09 /2024
Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DSK

TO

1 THE JUDICIAL MAGISTRATE,
TENKASI.

2 DO-THROUGH
THE CHIEF JUDICIAL MAGISTRATE, TENKASI.

3 THE JUDICIAL MAGISTRATE, SIVAGIRI.

4 THE SUPERINTENDENT OF POLICE
TENKASI.

5 THE INSPECTOR OF POLICE
SIVAGIRI POLICE STATION,
TIRUNELVELI DISTRICT.

6. THE SUPERINTENDENT,
CENTRAL PRISON, TIRUNELVELI.



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7. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.14672 of 2024
Date :24/09/2024

PSP/ VR /SAR /25.09.2024/ 8P/ 8C

Madurai Bench of Madras High Court is issuing certified
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