



CRL MP(MD) No.17350 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Thursday, the Eighteenth day of January Two Thousand and Twenty Four
PRESENT

The Hon`ble Mr.Justice M.DHANDAPANI
CRL MP(MD) No.17350 of 2023
in
CRL OP(MD) No.1569 of 2023

SENTHILKUMAR

... Petitioner / Defacto Complainant

Vs

1 NAGENDHIRAN
2 SEERALAN
3 SIDDHARTH
4 JEYARAMAN
5 MUTHUSELVAN

... Respondents 1 to 5 / Petitioners

6 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
THENI, THENI DISTRICT.
(CRIME NO. 4 OF 2023)

... 6th Respondent / Respondent

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to cancel the Anticipatory Bail granted to the respondents 1 to 5 by this Honble court in Crl O.P (MD) No. 1569 of 2023 dated 01.02.2023

Order : This criminal miscellaneous petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/s.LAKSHMI GOPINATHAN, Advocate for M/S.POLAX LEGAL SOLUTIONS, Advocate for the petitioner and of Mr.N.RANJITH, Advocate on behalf of the Respondent Nos.1 to 5 and of Mr.RMS.SETHURAMAN, Additional Public Prosecutor on behalf of the Respondent No.6, the Court made the following order:-



CRL MP(MD) No.17350 of 2023

WEB COPY

This Petition has been filed under Section 439(2) of Code of Criminal Procedure to set aside the order of anticipatory bail granted in CrI.O.P(MD) No.1569 of 2023 dated 01.02.2023.

2. The respondents No.1 to 5 were granted anticipatory bail by this Court vide order dated 01.02.2023, on the ground that they are ready and willing to deposit Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand only) to the credit of Crime No.4 of 2023 before the learned Judicial Magistrate, Theni, Theni District, without prejudice to their rights and contentions before the concerned Court. However, without noticing that the respondents have not deposited the said amount and sureties have not been executed before the concerned Court, the respondent police filed absconding charge Sheet.

3. The learned Government Advocate (Crl.Side) appearing for the State would submit that though absconding charge sheet was filed before the concerned court by the respondent police, realising that the conditional amount imposed upon the respondent Nos.1 to 5 was not deposited before the concerned Court, the respondent police revisited the charge sheet filed.

4. The learned counsel for the respondents Nos.1 to 5 would submit that on 17.01.2024, the respondent Nos.1 to 5 have taken a Demand Draft for a sum of Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand only) to the credit of Crime



CRL MP(MD) No.17350 of 2023

WEB COPY

No.4 of 2023 before the learned Judicial Magistrate, Theni, Theni District. He would further submit that on 12.01.2024, the respondent Nos.1 and 2 were arrested and remanded to judicial custody. He would further submit that a direction may be issued to the trial Court to disburse the amount to the defacto complainant, after obtaining appropriate affidavit from the defacto complainant and that if the respondent Nos.1 to 5 succeed in the trial, liberty may be granted to the respondents/accused for refund of the said amount.

5. The learned counsel for the petitioner/defacto complainant would submit that after a lapse of nearly one year, the respondents/accused have taken steps to comply with the condition.

6. Heard the learned counsel for the petitioner, learned counsel for the respondent Nos.1 to 5 and the learned Government Advocate (Crl.Side).

7. Considering the submissions made by both sides and also considering the fact that the respondent Nos.1 to 5 deposited the conditional amount by way of Demand Draft to the credit of Crime No.4 of 2023 before the learned Judicial Magistrate, Theni, Theni District, this petition is closed.

8. When the matter was taken up for hearing, the learned counsel for the respondents/accused submitted that the respondent Nos.1 and 2 were arrested and remanded to judicial custody on 12.01.2024. As per sub section (3) of Section 438



CRL MP(MD) No.17350 of 2023

Cr.P.C., if a person is thereafter arrested without any warrant by the police officer on such accusation, when the person is armed with the anticipatory bail or at the time of arrest or at any time while in the custody of such officer, then, he shall be released on bail.

9. For better appreciation, Section 438(3) of Cr.P.C., is extracted hereunder:

“(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).”

10. Therefore, while a person was arrested without a warrant, who is armed with an order of anticipatory bail, such an arrest itself would become void, if the person complies with the conditions imposed by the court and in the present case, when the conditions imposed by the court having been complied with, section 438(3) Cr.P.C., will come into play and therefore, the accused will be entitled to be released on bail.

11. In the case on hand, the respondents/accused have already been



CRL MP(MD) No.17350 of 2023

granted anticipatory bail by this court as early as on 01.02.2023. Subsequently, since the respondent Nos.1 and 2 were arrested and remanded to judicial custody on 12.01.2024, necessarily by invoking the provisions under section 438(3) Cr.P.C., they can be released on bail, subject to the following conditions:

12. The respondents No.1 and 2 are ordered to be released on bail on their executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate, Theni, Theni District, and on further conditions that:

(a) 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;

(b) the respondents No.1 and 2 are directed to appear before the respondent police daily at 10.30 for the period of two weeks and thereafter, he shall appear before the respondent Police as and when required;

(c) The trial Court may disburse the amount of Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand only) to the defacto complainant, after obtaining appropriate affidavit from the defacto complainant that if the respondent Nos.1 to 5 succeed in the criminal



CRL MP(MD) No.17350 of 2023

case, they are entitled for refund of the said amount;

WEB COPY

(d)the respondents No.1 and 2 shall not tamper with evidence or witness either during investigation or trial;

(e)the respondents No.1 and 2 shall not abscond either during investigation or trial;

(f)on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the respondents No.1 and 2 in accordance with law as if the conditions have been imposed and the respondents No.1 and 2 released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]; and;

(g)if the respondents No.1 and 2 thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-
18/01/2024

/ TRUE COPY /

19/01/2024
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

INDU / RR



CRL MP(MD) No.17350 of 2023

WEB COPY

To
1.The Judicial Magistrate,
Theni, Theni District.

2.Do through the Chief Judicial Magistrate,
Theni District.

3.The Inspector of Police,
District Crime Branch,
Theni, Theni District.

4.The Officer Incharge,
District Prison, Theni.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.RANJITH, Advocate (SR-795[I] dated 18/01/2024)

ORDER
IN
CRL MP(MD) No.17350 of 2023
IN
CRL OP(MD) No.1569 of 2023
Date :18/01/2024

ED/ /SAR- (19/01/2024) 7P / 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from
17/07/2023