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Crl.O.P.No.21233 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2025

CORAM

THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.21233 of 2025

Venkatesan

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
K-11, CMBT Police Station,
Chennai.
(Crime No.161 of 2024)

... Respondent

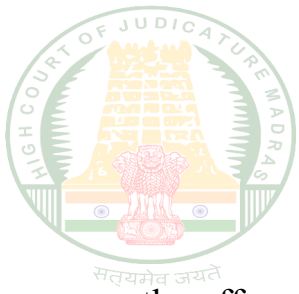
PRAYER : Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, to enlarge the petitioner on bail in connection with S.C.No.50 of 2025 on the file of the learned Principal District and Sessions Judge, Chennai, in Crime No.161 of 2024 on the file of the respondent Police.

For Petitioner : Mr.D.Padmanabhan

For Respondent : Mr.R.Vinothraja
Government Advocate (Criminal Side)

ORDER

The petitioner, who was arrested and remanded to judicial custody on 15.07.2025 in S.C.No.50 of 2025 pending on the file of the Principal District and Sessions Judge, Chennai, in connection with Crime No.161 of 2024 registered for



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the offences punishable under Sections 294(b), 323, 302 of IPC and Section 4 of TNPHW Act, seeks bail.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) and perused the materials available on record.

3.The learned counsel for the petitioner submits that the petitioner is facing trial in S.C.No.50 of 2025 in connection with Crime No.161 of 2024 and, was earlier arrested and subsequently enlarged on bail and thereafter, he has been regularly appearing before the trial Court. In S.C.No.50 of 2025, the trial was scheduled between 14.07.2025 to 17.07.2025. When the case was listed on 15.07.2025, the counsel defending the accused/petitioner before the trial Court failed to cross examine the witnesses. Hence, for non-cross examination, the trial Court *suo motu* cancelled the bail and remanded the petitioner to judicial custody on the same day, relying upon the decision of the Hon'ble Apex Court in ***State of U.P vs. Shambhu Nath Singh*** reported in (2001) 4 SCC 667.

4.The learned counsel further submits that the petitioner/accused was

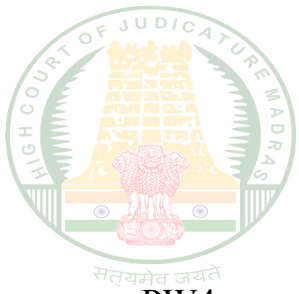


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present before the trial Court on 15.07.2025, but his counsel not appeared and cross examined the witnesses for the reason that the counsel appeared before the Madurai Bench of Madras High Court to attend a case. On 16.07.2025 & 17.07.2025, PW5 & PW6 examined and cross examined thereafter and case adjourned to 24.07.2025, the petitioner's counsel ready to cross the remaining witnesses then and there without delay. The petitioner filed a bail petition in Crl.M.P.No.6531 of 2023 but the bail petition was dismissed which is not proper and applicable to the facts of the case in hand.

5.He further submitted that the petitioner/accused has now changed his counsel for not diligently conducting trial and defending the accused and for not discharging his professional duty. The present counsel is ready and shall cross examine the witnesses then and there without any delay.

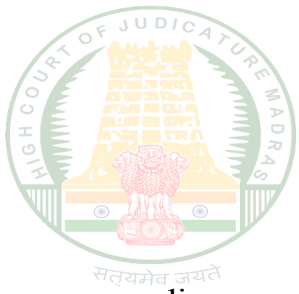
6.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that in this case, the occurrence took place on 28.04.2024, case registered in Crime No.161 of 2024 for offence under Sections 294(b), 323 & 302 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, charge sheet filed and trial pending. On 15.07.2025, PW1 to



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PW4 examined including the eye witnesses. Though the accused was present, his counsel not appeared in effect, cross examination of witnesses could not be completed. Thus, the petitioner not only protracting the trial, but also harassing the witnesses. Hence, strongly opposed for granting bail.

7.The learned counsel for the petitioner further submitted that in ***Shambhu Nath Singh*** case (cited supra), PW1 eye witness was examined, cross examination not completed and thereafter, the case was adjourned for several hearings from 9th November, 1994 to 25th September, 1995. The delay of cross examination is at the instance of the accused in that case. It is seen that on 25th August, 1995, the accused were warned by punitive action. Finally, when the case was listed for trial for continuation of PW1 cross, on that day PW1 not present, prosecution petition to adjourn the case under Section 309 Cr.P.C dismissed, prosecution evidence closed and judgment of acquittal pronounced on 09.01.1996. Thereafter, appeal against acquittal filed before the Allahabad High Court, grant to leave for appeal dismissed, on such fact, the Hon'ble Apex Court looking at Section 309 Cr.P.C., finding non cooperation of accused or his counsel directed the trial Court to adopt any of the measures indicated in Sub-Section i.e., remanding the accused to custody or imposing cost on the party who wants such

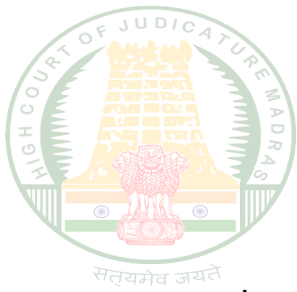


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adjournments. Further observed that when the accused is absent and the witnesses are present to be examined, the Court can cancel his bail if he is on bail. In the case on hand, the accused was present but his counsel not present, witnesses were examined on 15.07.2025, but not cross examined, but on the subsequent hearing dates on 16.07.2025 & 17.07.2025, PW5 & PW6 examined and cross examined. He further submitted that the petitioner cannot be penalized for his counsel mistake. The petitioner as undertrial prisoner cannot be detained endlessly for a prolonged period which amounts to pre-trial conviction.

8.Considering the above facts and circumstances of the case, the submissions made by the learned counsel appearing for the petitioner that the petitioner has now engaged another counsel and undertakes to cross-examine the witnesses then and there without fail, this Court is of the opinion that it would not be proper to penalize the petitioner/accused for the mistake committed by his Advocate. Taking note of the period of incarceration undergone by the petitioner, this Court is inclined to grant bail to the petitioner with certain conditions.

9.Accordingly, the petitioner is ordered to be released on bail on his



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executing a bond for a sum of **Rs.10,000/- (Rupees Ten Thousand only)** with **two sureties** each for a like sum to the satisfaction of the learned **Principal Sessions Judge, Chennai**, and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb Impression in the Application for Surety ship [Judicial Form No.46 annexed to 'The Criminal Rules of Practice, 2019']. The learned Magistrate shall obtain a copy of any one of the identity proofs to ensure their identity;

[b] the petitioner shall appear before the trial Court on all hearing dates, without fail;

[c] the petitioner shall make himself available for interrogation by a Police Officer as and when required;

[d] the petitioner shall not directly or indirectly cause any threat to the de facto complainant and witnesses;

[e] the petitioner to give an undertaking that if required for being identified by witnesses during investigation or for police custody beyond the first fifteen days, he shall comply to the directions as may be given by the Court in this regard;

[f] On breach of any of the aforementioned conditions, the learned Magistrate / Trial Court is entitled to pass appropriate orders against the petitioner in accordance with law as if the aforementioned conditions have been imposed and the petitioner 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)13 SCC 283]**;



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[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 269 of B.N.S.

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08.08.2025

Note:

1. Registry is directed to forthwith upload this order in the Official Website of this Court.
2. All concerned to act on this order being uploaded in Official Website of this Court without insisting on certified hard copies. To be noted, this order when uploaded in the official website of this Court will be watermarked and will also have a QR code.

To

1. The Principal Sessions Judge,
Chennai.
2. The Inspector of Police,
K-11, CMBT Police Station,
Chennai.
3. The Superintendent,
Puzhal Central Prison-II, Chennai.
4. The Public Prosecutor,
High Court of Madras.



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M.NIRMAL KUMAR, J.

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