



CRL OP(MD). No.1397 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 29.01.2025

PRESENT

The Hon`ble Mr.Justice N.ANAND VENKATESH

CRL OP(MD). No.1397 of 2025

Mithun @ Mithun Manickam,
S/o.Jeyaraman

... Petitioner/ Accused No.1

Vs

The State of Tamil Nadu
represented by the Inspector of Police,
Manamadurai Police Station,
Sivagangai District.
(Crime No.10 of 2021)

... Respondent / Complainant

For Petitioner : Mr.J.Vijayaraja,
Advocate.

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor

PETITION FOR BAIL Under Sec.483 of BNSS,2023.

PRAYER :-

For Bail in Crime No.10 of 2021 on the file of the respondent Police.



CRL OP(MD). No.1397 of 2025

ORDER : The Court made the following order :-

The petitioner / Accused No.1, who was arrested and remanded to judicial custody on 05.01.2024 for the alleged offences under Sections 341, 307, 302, 147, 148, 120(b), 324, 326, 149, 114 of IPC, in Crime No.10 of 2021, on the file of the respondent police, seeks bail.

2. The petitioner has been arrayed as an accused in Crime No.10 of 2021. He was initially arrested and remanded to judicial custody. Subsequently, he filed a bail application and the petitioner was granted bail. There are some previous cases against the petitioner and in one of those cases, he was arrested and he was in judicial custody. The petitioner was produced before the learned Judicial Magistrate Court, Manamadurai on execution of PT warrant and the concerned Court based on the fact that the petitioner did not appear before the Court during the hearing, proceeded to remand the petitioner to judicial custody and the proceedings dated 19.08.2024 is to the effect that a NBW was issued against the petitioner and there was no satisfactory explanation for the non-presence and therefore, the concerned Court cancelled the earlier bail granted and remanded the petitioner to judicial custody in exercising the power and jurisdiction under Section 309 of CrPC.



CRL OP(MD). No.1397 of 2025

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3. The learned counsel for the petitioner submitted that insofar as the petitioner is concerned, the matter was pending in P.R.C. No.41 of 2022 at the stage of service of summon. To substantiate the same, the petitioner drew the attention of this Court to the proceedings dated 08.09.2023 wherein it has been mentioned that fresh summons is pending as against the petitioner. The learned counsel submitted that all of a sudden, the learned Magistrate assumed that a NBW is pending against the petitioner and thereafter, proceeded to cancel the bail granted in favour of the petitioner and remanded the petitioner to judicial custody after he was produced before the Court on execution of the NBW. The learned counsel submitted that such a course of action adopted by the learned Judicial Magistrate is illegal and to substantiate the same, the learned counsel relied upon the judgment of this Court in *Palanivel -vs- State, represented by Inspector of Police, Veeranam Police Station, Salem District (Crime No.538 of 2023)* reported in *(2019) 3 MLJ (Crl) 351*. The learned counsel also relied upon the subsequent orders passed by this Court by relying upon this order in some of the bail applications.

4. The learned Additional Public Prosecutor, on instructions, submitted that the petitioner is a history sheeter and that he has 6 previous cases against him and all



CRL OP(MD). No.1397 of 2025

those cases are pending trial. The learned Additional Public Prosecutor submitted that the NBW was issued against the petitioner on 05.01.2024 and it was able to be executed only on 19.08.2024. The learned Additional Public Prosecutor further submitted that due to the attitude of the accused persons, even though the case has now been committed to the file of the learned Principal District and Sessions Court, Sivagangai which is pending in S.C.No.209 of 2024, the Court is not able to frame charges. The learned Additional Public Prosecutor submitted that in a case where the petitioner is enlarged on bail and subsequently the petitioner fails to appear before the Court, the Magistrate Court can always cancel the bond and remand the petitioner to prison by executing the NBW, in exercising its power and jurisdiction under Section 309 of CrPC. The learned Additional Public Prosecutor further submitted that the PT warrant that was issued against the petitioner was also converted into a regular warrant and the petitioner was also questioned by the learned Magistrate. The learned Additional Public Prosecutor further submitted that the case is now posted for framing of charges on 12.02.2025. Accordingly, the learned Additional Public Prosecutor vehemently opposed the grant of bail to the petitioner.

5. This Court has carefully considered the submissions made on either side and perused the materials available on record.



CRL OP(MD). No.1397 of 2025

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6. There is no dispute with regard to the fact that the petitioner was initially granted bail in this case. Subsequently, the petitioner was arrested in some other case and he was in judicial custody. The Court proceedings of the learned Judicial Magistrate, Manamadurai were placed before this Court. On going through the same, it is seen that right from 25.04.2022 till 08.09.2023, it has been mentioned that fresh summons is pending for A1 apart from some other accused persons. It is also mentioned that NBW is pending as against some of the other accused persons. All of a sudden, in the proceedings dated 05.01.2024, the learned Magistrate has mentioned as if NBW is pending as against A1 apart from A6 and A7. It is not known as to when the NBW was issued against the petitioner (A1) and probably due to over sight, the petitioner was also included in the list of accused persons against whom the NBW was issued. Thereafter, the petitioner was produced before the learned Judicial Magistrate on execution of PT warrant and it was converted into a regular warrant and he was questioned and the Court not being satisfied with the answer given by the petitioner for his non appearance, forfeited the bond that was executed by the petitioner while he was granted bail earlier and the petitioner was remanded to judicial custody in exercise of power under Section 309 of CrPC.



CRL OP(MD). No.1397 of 2025

WEB COPY

7. The procedure that was adopted by the learned Judicial Magistrate, Manamadurai is illegal. Insofar as the petitioner (A1) is concerned, there is absolutely no indication as to when NBW was issued against the petitioner. This is in view of the fact that the petitioner was in judicial custody in some other case and till 05.01.2024, the case was only at the stage of issuance of fresh summons to the petitioner (A1). Therefore, the learned Judicial Magistrate assuming that a NBW is pending against the petitioner, is the first mistake that was committed by the learned Magistrate. In view of this mistake committed by the learned Magistrate, subsequently the bail granted in favour of the petitioner was cancelled after the petitioner was produced before the Court by virtue of PT warrant. Even there the procedure that was adopted by the learned Magistrate is illegal in view of the judgment of this Court in *Palanivel -vs- State, represented by Inspector of Police, Veeranam Police Station, Salem District (Crime No.538 of 2023)* reported in (2019) 3 *MLJ (Crl)* 351. Hence, remanding the petitioner to judicial custody through proceedings dated 19.08.2024 is illegal and unsustainable. Hence, this Court has to necessarily enlarge the petitioner on bail.

8. In the light of the above discussion, this Court is inclined to grant bail to the petitioner subject to the following conditions:



CRL OP(MD). No.1397 of 2025

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9. Accordingly, the petitioner is ordered to be released on bail on his 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 District and Sessions Court, Sivagangai, 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 petitioner shall report before the learned Principal District and Sessions Court, Sivagangai daily at 10.30 a.m. apart from the hearing dates until further orders, except on those dates where the petitioner has to appear before Court in the other cases which are pending against him.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.



CRL OP(MD). No.1397 of 2025

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[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the 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)AIR SCW 5560]**.

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 269 of BNS, 2023.

sd/-
29/01/2025

/ TRUE COPY /

29/01/2025
Sub-Assistant Registrar ()
Madurai Bench of Madras High Court,
Madurai - 625 023.

PAL

TO

- 1 THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE, SIVAGANGAI.
- 2 THE INSPECTOR OF POLICE,
MANAMADURAI POLICE STATION,
SIVAGANGAI DISTRICT.



CRL OP(MD). No.1397 of 2025

3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

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

COPY TO:
THE JUDICIAL MAGISTRATE,
MANAMADURAI.

+1 CC to M/s.J.VIJAYARAJA, Advocate (SR-1038[I] dated 29/01/2025)

ORDER
IN
CRL OP(MD) No.1397 of 2025
Date :29/01/2025

SS/SAR- /29/01/2025/ 9P/7C

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