



CRL OP(MD). No.699 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 14/02/2025

PRESENT

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

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Muthu Esaki @ Vaganam,
S/o.Ulaganathan,
No.4/21, Muppidathi Amman Kovil Street,
Timmerajapuram,
Palayamkottai,
Tirunelveli District- 627353.

... Petitioner/ Accused

Vs

1.The State of Tamilnadu,
Rep. by the Inspector of Police,
Sivagiri Police Station,
Tirunelveli District.
(Crime No. 173 of 2016).

2.The Superintendent of Police,
O/o. the Superintendent of Police,
Tenkasi,
Tenkasi District.

... Respondents/ Complainants



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For Petitioner :Mr. K.Sankar,
Advocate.

For Respondents : Mr.P.Kottaichamy,
Government Advocate (Crl.Side)

PETITION FOR BAIL Under Sec.483 of BNSS

PRAYER :- To release the petitioner on bail in P.R.C.No. 31/2018 on the file of the Learned Judicial Magistrate, Sivagiri in connection with Crime No. 173 of 2016 pending on the file of the respondent police.

ORDER

The petitioner/A8 in Crime No.173 of 2016, who was arrested and remanded to judicial custody on 31.01.2024, for the offence under Section 397 IPC seeks bail.

2.The learned counsel appearing for the petitioner submits that this is the sixth application filed by this petitioner, seeking bail. The petitioner is languishing in jail for the past one year. The case is in the PRC stage, without committing to the trial Court. The warrant issued as against the other accused has not been executed by the respondent police and therefore, the petitioner is unnecessarily confined in prison for the past one year. Now, the learned counsel has come forward with an affidavit of one Kumar, the Village Head of Melappattam Village, Tirunelveli with an assurance that the petitioner will not indulge in any offence in future.

<https://www.mhc.tn.gov.in/judis> 3.The learned Government Advocate(Crl.side) appearing for the



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respondent submits that there are totally nine accused in this case. The case could not be progressed for want of accused 1,4,5,6,7 and 9. In case, if the petitioner is released on bail, there will be chances of tampering the evidence by him.

4.This Court considered the rival submissions made and also perused the materials placed on record.

5. A case in Crime No. 173 of 2016 was initially registered for the offence under Section 379 IPC and thereafter, it was altered into 397 IPC. The petitioner, who is arrayed as A8 in the above case was arrested in the year 2016 and was also released on bail. The respondent police has filed a final report before the learned Judicial Magistrate, Sivagiri, in the year 2018 and the same is pending in PRC No.31 of 2018. The petitioner is said to have appeared upto 2020 in the PRC proceedings. However, the case was not committed for want of accused 1, 4, 5, 6, 7 and 9. The petitioner has failed to appear before the trial Court on 09.02.2021 and therefore, a non bailable warrant of arrest was issued as against this petitioner. After three years, the petitioner was secured on 31.01.2024. The petitioner has moved the earlier application before this Court seeking bail in CrI.OP(MD) No. 4389 of 2024 and the same was dismissed on 05.04.2024, considering the nature of offence, his involvement in another crime and also considering that he has absconded for more than three years. In the second application filed by this petitioner, this Court has also called for a report from the



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concerned Judicial Magistrate for the reasons for not committing the proceedings, which is pending from the year 2018. A report, dated 12.09.2024 has also been submitted by the Judicial Magistrate, Sivagiri, wherein, she has stated that the warrant issued as against the other accused have not been executed by the police and therefore the committal proceedings is pending. Subsequent applications filed by the petitioner were dismissed by this Court considering the antecedent of this petitioner. This Court, in the earlier application filed by this petitioner in Crl.OP(MD) No.14672 of 2024 has passed the following order.

“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 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



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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 in evidence. The respondent police and the Courts are having certain responsibilities to the victims,



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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.



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iv.The Superintendent of Police is expected to take appropriate action as against the officers concerned, who have failed to execute the non bailable warrant as against the accused for the past several years.”

6.Even after the above order of this Court dated 24.09.2024, the respondent police have not taken any steps to secure the remaining accused. This is the sixth application filed by the petitioner, seeking bail. The petitioner is languishing in jail for the past one year. The Court has not taken any steps to commit the proceedings, by splitting up the case as against the available accused, who are in jail. For the sake of other accused and without any progress in the case, this petitioner is confined in jail for the past one year. In the aforesaid order, this Court has expected some response from the Superintendent of Police with regard to the non-execution of warrant issued as against the remaining accused. Even after the reminder, dated 24.09.2024, the respondent police have not taken any initiative to secure the remaining accused. It appears that the Superintendent of Police has not bothered about the pendency of this case from the year 2018, without committal on the ground of non-execution of warrant. It exposes the capacity of the Tenkasi police in securing the remaining accused in this case. The Court is also not proceeding with the case further, by committing the proceedings with the available accused.

7. In view of the above, this Court is of the view that no useful purpose



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would be served, if the petitioner is allowed to confine in prison, when the case is pending at PRC stage. The Village Head of Melappattam Village, Tirunelveli has filed an affidavit with an assurance that the petitioner will not indulge in any offence in future. Therefore, this Court is inclined to grant bail to the petitioner with some conditions.

8. Accordingly, this Criminal Original Petition is ordered and the petitioner is ordered to be released on bail on the following conditions:-

i) The petitioner shall execute a bond for a sum of Rs.1,00,000/- (Rupees One Lakh) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Sivagiri, Tirunelveli. One surety shall be the Village Head of Melappattam Village, Tirunelveli.

ii) The petitioner and the sureties shall submit a copy of their Aadhaar Card or any other identity card issued by the Government in proof of their residence address;

iii) The petitioner shall report before the respondent police daily at 10.30 a.m, until further orders.

iv) The petitioner shall not misuse the liberty granted to him by indulging in any further offence and shall not tamper with the prosecution witnesses. He shall be available for the trial as well.



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v) On violation of any of the above conditions by the petitioner,
the respondent police shall move an application for cancellation of the
bail.

sd/-
14/02/2025

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14/02/2025
Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

VRN
TO
1 THE JUDICIAL MAGISTRATE,
SIVAGIRI, TIRUNELVELI.

2 DO THROUGH THE CHIEF JUDICIAL
MAGISTRATE, TIRUNELVELI DISTRICT.

3 THE SUPERINTENDENT OF POLICE,
O/O. THE SUPERINTENDENT OF POLICE,
TENKASI,
TENKASI DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, TIRUNELVELI.

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

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



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+1 CC to M/s.K.SANKAR, Advocate (SR-1652[I] dated 14/02/2025)

ORDER
IN
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Date :14/02/2025

SA/SAR. /14.02.2025/10P/8C

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