

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.No.12728 of 2016

M.Ramalingam

...Petitioner

Vs

The State rep by its,
Inspector of Police,
Kizhaiyoor Police Station,
Nagaipattinam.

...Respondent

Prayer:- Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure to direct the release of the petitioner/approver in concerned S.C.No.141 of 2015 on the file of learned District Mahila Court, Nagaipattinam district on suitable condition.

For Petitioner :Mr.R.Sathish Kumar

For Respondent :Mr.C.Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to direct the release of the petitioner/approver in concerned S.C.No.141 of 2015 on the file of learned District Mahila Court, Nagapattinam district on suitable condition.

2. It is the case of the prosecution that the accused along with the other accused assaulted the learned District Munsif cum Judicial Magistrate, Vedharanyam, Nagapattinam District, on account of certain previous enmity, which was nurtured by A1, a practising advocate.

3. Pursuant to the conspiracy, the accused herein attacked the learned District Munsif cum Judicial Magistrate on 18.03.2015, when she was proceeding towards Vedharanyam. In this connection, the respondent police registered a case in Crime No.83/2015 and during the course of investigation, the petitioner herein was arrested and his confession statement was recorded under Section 164 Cr.P.C,. Thereafter, he was tendered pardon and was taken as a witness. Apart from the petitioner, the police arrested four others and now, they are released on bail. Since the petitioner was taken as an approver, he has not been released on bail till date in view of Section 306(4)(b) Cr.P.C.

4. Under such circumstances, the petitioner has invoked the inherent jurisdiction of this Court for a direction to be released on bail, since he is in incarceration from 25.03.2015 and that, he has also been examined before the trial Court as P.W.2.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

6. It is true that under Section 306 (4) (b) Cr.P.C, an approver will not entitled to be released on bail until the conclusion of the trial. However, this Court has granted bail to an approver in exercise of powers under Section 482 Cr.P.C vide ***Subramanian @ Ravi Subramanian Vs. State rep.by Inspector of Police, Chennai***, reported in **(2014) 1 MLJ (Cri) 117**, though he had not supported the prosecution during trial.

7. In fact in ***Munisamy V. The Superintendent, Central Prison, Salem*** reported in **(1988) 1 MLJ (Cri) 97**, a Division Bench of this Court has considered the scope of Section 306 (4) (b) Cr.P.C and has held that it is not an inexorable rule to keep the approver in prison till the culmination of the trial as that would be in violation of Article 21 of the Constitution of India. The Division Bench observed that interference is called for only in extraordinary situations and granted bail to the approver therein, despite Section 306 (4) (b) Cr.P.C.

8. In this case, the petitioner was arrested on 25.03.2015 and his confession has been recorded under Section 164 Cr.P.C and thereafter, he was tendered pardon. He has been examined on 11.04.2016 and he supported the prosecution case on all fours. He has also been extensively cross-examined by the accused and he withstood the cross examination. Thereafter, to keep him in custody, when the other accused are enjoying bail, in the considered opinion of this Court, will be a travesty of justice. Though the victim in this case is a Judicial Officer, this Court should not be swayed by such factors and deny the benefit of bail to the petitioner.

9. In the result, the criminal original petition is allowed and 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 Judicial Magistrate No.II, Nagaipattinam and on further condition that:

[a] the petitioner shall report before the trial Court every Monday at 10.30 a.m., until the culmination of the trial.

[b] the petitioner shall not tamper with evidence or witness during trial.

[c] the petitioner shall not abscond.

[d] 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]**.

sms

24.06.2016

Note: Issue order copy on 27.06.2016

To

1. Inspector of Police,
Kizhaiyoor Police Station,
Nagaipattinam.
- 2.The Public Prosecutor,
High Court, Madras.

P.N.PRAKASH,J.

sms

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