

CrI.O.P. (MD) No. 12722 of 2017

Gowtham v. State

2017 SCC OnLine Mad 29723

In the High Court of Madras[±]
(BEFORE M.V. MURALIDARAN, J.)

1. Gowtham
2. Mathi @ Mathibala
3. Ananth Petitioners

v.

State rep. by The Inspector of Police, Devakottai Town Police
Station, Devakottai, Sivagangai District (In Cr. No. 384/2017) .
.... Respondent

CrI.O.P. (MD) No. 12722 of 2017
Decided on September 28, 2017

For Petitioner: M/s. P. Krishnaveni

For Respondent: Mr. C. Ramesh Additional Public Prosecutor

Prayer: Criminal Original Petition filed under Section 438 of Criminal Procedure Code, to enlarge the Petitioners on bail in the event of their arrest in Cr. No. 384 of 2017, on the file of the Respondent Police.

The Judgment of the Court was delivered by

M.V. MURALIDARAN, J.:— The legal issue involved in the instant case is as to whether the petitioners are entitled for the relief of Anticipatory Bail or not. The issue is decided in affirmative and the petitioners are entitled to the relief of Anticipatory Bail. Accordingly it was granted. However, it was brought to the notice of this Court by the learned counsel for petitioners that when the petitioners surrendered before the learned Judicial Magistrate concerned, directed the Petitioners to produce Identity Card and other particulars about them. In the interest of justice, this Court considered that there is a no such provision is available to the learned Magistrate to direct a person who surrenders before the Court concerned, to produce their Identity cards, the Judicial Magistrate was directed to appear before this Court by passing a judicial order on the 27th day of September, 2017. The Magistrate concerned appeared before this Court on the 28th day of September, 2017. She has submitted that since several persons who have no way connected to the alleged criminal cases have voluntarily surrendered and therefore the concerned Magistrate directed the Petitioners to file proof for their identity.

2. However, in the considered opinion of this Court, as the persons, who alleged to be involved in the offences, absconding for a long period cannot be in a position to produce their Identity card and their proves. Further, in this connection a direction was given to the learned Magistrate that the surrender of such persons may be accepted and they may be sent to the concerned Court and intimation may be given also to the Police Station concerns?.

3. However, the situation brought to the notice of this Court is taken up for appraisal and the following guidelines given in the case of surrender of a person concerned in connection with criminal case before the Judicial Magistrate Court, before parting with the issue, this Court referred the judgment of Hon'ble Supreme Court reported in (1978) 4 SCC 47 : AIR 1978 SC 1594 in the case of *Mothiram v. State of*

Madhya Pradesh, wherein His Lordship, Justice. V.R. Krishnaiyer had an occasion to deal with the issue of production of sureties and the release of the accused on own bond with or without sureties take Para 29 and 30 of the judgment:

"The dictum of the said judgment is relied on here for the compelling necessity to highlight that how the Courts of Judicial Magistrates were ought to deal with the issue of sureties. Further, it is also held that "it was not within the power of Court to reject the sureties he or his estate was to situate in a different district or state. There was no law prescribed the geographical discrimination implicit in asking for sureties from Court district. So, the demand by the Magistrate, of sureties from his own district was discriminatory and illegal."

4. This law was laid on by the Hon'ble Supreme Court in the year 1978 that is about nearly 39 years ago. Now let us see the approach of the learned Judicial Magistrate in directing the person who surrenders before the Court concerned to produce their Identity card, without even considering that they are in abscondance. In fact, the Code of Criminal Procedure provides the Anticipatory Bail as contemplated Under section 438 of Code of Criminal Procedure, which facilitates the person, to get the said relief, who under the apprehension of arrest. When the legal position is thus even in the case of considering the sureties, the learned Judicial Magistrates are expected to keep in their mind the procedural aspects of person surrenders before a Court.

5. Moreover for the past several decades, it is the usual practice in Judicial Magistrate Courts that the persons surrender before the Court are filed application to surrender and by accepting the surrender, considering the reasons set-out in the application, the order will be passed. Further, the Court concerns would intimate the concerned jurisdictional Court and concerned Police Station about the surrender of the persons concerned. Now the Electronics Medias are well developed and have become digitalized, so the identity of the person who surrenders before the Court concern could be very well ascertained on several ways. So, there is no necessity to direct the person who surrenders to produce their Identity card without considering their state of abscondance.

6. Therefore, this Court is constrained to hold that the Courts concerned are hereby directed not to insist upon the persons who surrender in connection with criminal case to produce their Identity card for the proof of their own identity. At the same time the Court concerned may be dealt with the surrender petition in accordance with law. The appearance of the learned Judicial Magistrate No. VI, Madurai, is dispensed with. With the above observation, this Criminal Original Petition is disposed of.

† Madurai Bench

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