

(1991) 01 MAD CK 0064

In the Madras High Court

Case No : Criminal M.P. No. 11277 of 1990

Assistant Collector of Central Excise, Customs Airport

APPELLANT

Vs

Sudha @ Sudakar

RESPONDENT

Date of Decision : 24-01-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439, 482

Citation : (1993) 41 ECC 11

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Padmini Jesudurai, J.—This is an application by the Assistant Collector of Central Excise, Customs Airport, Tiruchirapalli u/s 439 Cr. PC read with 482 Cr. PC for cancelling the bail granted to the respondent herein by the learned Sessions Judge, Tiruchirapalli.

2. A case in O.R. No. 34/90 Customs Airport Trichy was registered and the respondent was the second accused. The offence was under the Narcotic Drugs and Psychotropic Substances Act. The co-accused was found to be in possession of 266 grms. of heroin valued at Rs. 26,60 (sic) concealed in his shoes in the Airport. On his information, the complicity of the respondent came to light. After investigation complaint was laid before the Judicial Magistrate No. 1 Trichy on 19-7-90. The respondent sought bail before the learned Sessions Judge, Trichy, on 2-7-90 in CrI. M.P. No. 1799/90, bail was granted and it was later modified on 6-7-90 which the respondent was ordered to be released on bail on condition that he deposit a sum of Rs. 10,000/- in cash and furnishes security bond for a sum of Rs. 6,000/- to the satisfaction of the Judicial Magistrate No. 1 Trichy, and on his release he should appear before the Court of Sessions every Monday and Thursday at 10 a.m. and report. The respondent came out on bail. Challenging the correctness, propriety of the order, the petitioner has filed this application on the ground that the gravity of the offence does not warrant bail and the

respondent who is a Sri Lankan national and who has no fixed place of residence in India would abscond if released on bail.

3. After this petition was admitted and when notice was sought to be served on the respondent by the Sessions Court, Trichy, the notice was returned unserved, expressing inability to serve on the respondent, since the whereabouts of the respondent is not known. Notice of this petition therefore, has not been served on the respondent.

4. The respondent is a Sri Lankan. According to the learned Public Prosecutor for the petitioner, he has no fixed place of residence in India and there was every likelihood of the petitioner (sic) absconding and these facts were brought to the notice of the learned Sessions Judge when the bail was being considered. Though this petition has been pending from 31-7-90, notice could not be served on the respondent and the final reply of the learned Second Additional Sessions Judge, Trichy dated nil, despatched on 29-11-90 is to the effect that the Assistant Collector of Customs Airport, Trichy has returned the notice unserved on the ground that the whereabouts of the respondent is not known.

5. Learned Public Prosecutor represents that despite the best efforts of the Department, they are not able to trace the respondent and that obviously he has left India for Sri Lanka. The conditions imposed on the respondent, that he should report before the Sessions Judge, Trichy on every Monday and Thursday still stand. The respondent has not complied with the conditions but he has absconded. The conditions have been violated. Since he is absconding, notice cannot be served on him. Under these circumstances, this petition can neither be dismissed nor kept pending endlessly, merely because notice had not been served on the respondent, who has violated the conditions of the bail and has either gone underground or gone abroad. Recording the fact that all reasonable steps have been taken to serve the notice on the respondent and service is sufficient, though notice had not reached him, the bail granted to the respondent is hereby cancelled. It will be open to the petitioner to arrest the respondent, who in the event of such an arrest would be entitled to seek bail, if he established that the violation of the condition attached to the bail had been due to circumstances beyond his control.

6. In the result, this petition is allowed, the bail granted to the respondent by the learned Sessions Judge, Trichy in Crl. M.P. No. 1799/90 and as modified in Crl. M.P. No. 1923/90 is hereby cancelled.