

ORDER RESERVED ON : 03.07.2017
ORDER DELIVERED ON : 05.07.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Crl.R.C.No.505 of 2017
and
Crl.M.P.No.4465 of 2017

Selvam @ Selvaraj ... Petitioner

Vs.

1.The Executive Magistrate cum
Deputy Commissioner of Police,
(Law & Order, Crime and Traffic),
Tiruppur City.

2.The State rep. By
The Inspector of Police,
Anupparpalayam Police Station,
Tiruppur City.

... Respondents

Petition filed under Section 397 and 401 of C.R.P.C against the order dated 30.01.2017 made in C.No.303/DC/L&O/CRIME/TRAFFIC/TPC/2016 dated 30.01.2017 on the file of the Executive Magistrate cum Deputy Commissioner of Police (Law & Order, Crime and Traffic) Tiruppur City.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.R.Rajarathinam
Public Prosecutor

O R D E R

This criminal revision case has been filed challenging the order of detention passed by the first respondent in his order dated 30.1.2017 in C.No.303/DC/L & O/Crime/Traffic/TPC/2016.

2. The second respondent police seems to have registered a case against the petitioner in Cr.No.1143 of 2015 and 210 of 2016 for the alleged offences punishable under Sections 294(b), 324 and 506(ii) of IPC.

3. While the said cases are pending, the further case in Cr.No.676 of 2016 was also registered at the second respondent police station, pursuant to the said registration of case, the petitioner was subjected to proceedings to be initiated u/s 110 (a), 117 r/w 113 of Cr.P.C by the first respondent / Executive Magistrate.

4. Accordingly, on 19.07.2016, a show cause notice was issued by the first respondent as an Executive Magistrate u/s. 111 of Cr.P.C, against the petitioner, asking to show cause, why it should not be ordered, to keep the peace, to execute a bond for the period of one year.

5. Pursuant to the said show cause notice dated, 19.7.2016, the petitioner had appeared before the first respondent. It was claimed by the petitioner that, on the said date, where the petitioner appeared before the first respondent, no enquiry was conducted and in fact, the first respondent directed the petitioner to execute a bond, the petitioner having no option under the hands of the first respondent, had executed a bond as directed.

6. The said probationary bond executed by the petitioner under Section 117 Cr.P.C, was for the period of one year, and based on which, the petitioner was kept under watch and vigil at the second respondent police station.

7. Whiles, the second respondent seems to have sent a report on 09.1.2017, to the first respondent, stating that, the petitioner had indulged in criminal activities in the second respondent police station limits, inspite of the fact that he executed a probationary bond on 20.7.2016 and thereby, the petitioner had violated the bond condition.

8. Pursuant to the said report dated 09.1.2017 received from the second respondent, the first respondent issued a show cause notice to proceed further against the petitioner u/s 122 (1) (b) Cr.P.C on 27.1.2017. In the meanwhile, pursuant to an FIR registered against the petitioner dated 01.01.2017, he was apprehended and was sent to judicial custody. Accordingly, the petitioner was lodged at Central Prison, Coimbatore. Therefore, the show cause notice dated 27.1.2017, issued by the first respondent, was served on the petitioner through the Additional Superintendent, Central Prison, Coimbatore on 27.1.2017.

9. In the said show cause notice dated 27.1.2017, the first respondent has directed the petitioner to appear on 30.1.2017 at 10.00 hours.

10. On the date itself i.e, on 30.1.2017, the present order of detention was passed. In the said order, the first respondent stated the crux of the report, dated 09.1.2017 sent by the second respondent, about the incident taken place on 01.01.2017, where the petitioner along with other two persons involved in an alleged attack and with the result, the said FIR in Cr.No.2/2017, dated 01.01.2017 was registered and in fact, pursuant to the said FIR only, the petitioner was lodged in Central Prison, Coimbatore by way of judicial custody.

11. After setting out the said incident, as reported by the second respondent by report dated 09.1.2017, the second respondent has concluded that, the petitioner had already involved in cases on three occasions, where FIR's have been registered, and in the facts and circumstances, if the petitioner is allowed to remain at large he would indulge in such anti-social activities in future, which would affect public tranquility. The first respondent has further stated in the said order of detention that, as the petitioner had infringed the probationary bond dated 20.7.2016 for one year, by involving in the case which was cited as 4th item, it was requested by the second respondent / Inspector of Police, Anuppapalayam police station, that appropriate action u/s 122(1)(b) of Cr.P.C against the petitioner has to be taken in order to prevent him from indulging in further activities.

12. After having stated so, the second respondent has passed the impugned order of detention, whereby, cancelling the probationary bond executed by the petitioner and directed to keep the petitioner in custody till 19.07.2017 i.e., till the completion of period of the probationary bond as per the maximum period of custody u/s 117 Cr.P.C. Only challenging the said order of detention dated 30.1.2017, this revision has been filed.

13. Mr.C.Prabakaran, the learned counsel appearing for the petitioner would submit that the reference of references 1, 2 and 3 made in the impugned detention order are past events, which are in no way connected with the bond executed by the petitioner. Even in respect of the 4th one i.e., pursuant to the FIR dated 01.01.2017, the petitioner already was arrested and detained under judicial custody. The case was not conducted and charge also was not laid. When that being so, if the first respondent decides to proceed u/s 122 of Cr.P.C and in this regard, if notice is issued to the petitioner to appear before him, on the date of hearing, the first respondent, should have given an opportunity to the petitioner to put forth his case.

14. The learned counsel for the petitioner would also submit that though the petitioner was produced before the first respondent on 30.1.2017 from the jail, where he was put under judicial custody, the alleged report submitted by the second respondent / Inspector of Police, dated 09.1.2017 with connected materials, have ever been supplied to the petitioner.

15. The learned counsel for the petitioner would also submit that the petitioner is not an educated man and he does not know English. When that being so, what are all the materials relied on by the first respondent before coming to the conclusion u/s. 122(b) of Cr.P.C, those materials / documents, in vernacular, should have been supplied to the petitioner, and after giving an opportunity to the petitioner about such materials / documents, if any, and after getting the views of the petitioner, either in person or through the pleader, then only on satisfaction, to state that if the petitioner is at large, he would further indulge in activities which would endanger the public good, peace and tranquility, the first respondent as an Executive Magistrate can proceed further to pass the detention order u/s 122(1) (b) of Cr.P.C.

16. The learned counsel for the petitioner would submit that in the case on hand, none of the above ingredients are available, no such procedure as contemplated or expected to be adhered to strictly, has been followed or adhered to by the first respondent before passing the impugned order. He would also submit that the first respondent has passed a mechanical order of detention, by cancelling the bond executed by the petitioner, merely based on the alleged report sent by the second respondent / Inspector of Police, which therefore, would vitiate the entire proceedings, which concluded by way of detention and therefore, the learned counsel for the petitioner would submit that the impugned detention order is liable to be set aside.

17. Per contra, Mr. R.Rajaratnam, the learned Public Prosecutor, by relying upon the counter affidavit filed by the second respondent, would submit that the petitioner has already involved in criminal activities and in this regard, atleast 4 cases are pending against the petitioner. In this regard, the learned Public Prosecutor would rely upon paragraph 13 of the counter affidavit which would read thus:

Sl.No.	Police Station & Crime No.	Section of Law	Stage of the case
1.	Annuparpalayam PS Crime No.1143 of 2015	U/s 294(b), 324, 506(ii) IPC	Pending trial

Sl.No.	Police Station & Crime No.	Section of Law	Stage of the case
2.	Annuparpalayam PS Crime No.210 of 2016	U/s 294(b), 324, 506(ii) IPC	Pending trial
3.	Annuparpalayam PS Crime No.676 of 2016	U/s 110 (a) Cr.P.C	Bound over
4.	Annuparpalayam PS Crime No.2 of 2017	U/s 294(b), 324, 506(ii) & 307 IPC	Under investigation

18. The learned Public Prosecutor would further argue that no doubt, Section 122 (1) (b) Cr.P.C requires that the Executive Magistrate, after recording the grounds of proof that the person, who executed the bond, has violated the same, then only can order that the person be arrested and detained in prison until the expiry of the period of the bond.

19. The subclause 'b' of Section 122(1) only speaks about the recording the grounds for proof. In this regard, the learned Public Prosecutor would submit that in the case in hand, even after the execution of the bond, the petitioner has involved in a case, where the FIR was registered for the alleged offences u/s. 294(b), 324, 506(ii) and 307 IPC and the said case is under investigation. Before this case or before the bond executed by the petitioner, there are three more cases pending against the petitioner. Therefore, unlawful activity of the petitioner is continuing in nature or unabated.

20. The learned Public Prosecutor would also submit that inspite of the bond being executed by the petitioner, he was not stopped with and within the bond period itself, since the petitioner has involved in yet another incident, which lead to his judicial custody, then certainly, the second respondent, who is the Inspector of police as well as the jurisdictional station house officer, in order to maintain peace in the locality, has sent a report to the first respondent, requiring him to invoke Section 122 Cr.P.C, as the petitioner has violated the bond conditions.

21. The Public Prosecutor would further state that only on receipt of such report dated 09.1.2017 which is especially after the FIR dated 01.01.2017 against the petitioner, the first respondent decides to proceed further u/s 122 Cr.P.C and in this regard, show cause notice was issued to the petitioner through jail authorities, as the petitioner at that time was in judicial custody at Coimbatore Central Prison. On receipt of show cause

notice, the petitioner did appear before the first respondent on 30.1.2017. Further, though such an opportunity of being heard was given to the petitioner to make his defence validly, if any, against the proposed action of cancelling the bond and detain him till the bond period, no such defence was given by the petitioner and in fact, the petitioner was not in a position to give any satisfactory answer or defence against such action proposed by the first respondent u/s 122 (1) (b) of Cr.P.C.

22. The learned Public Prosecutor would further submit that, therefore, on considering the overall situation, especially on the basis of the report dated 09.1.2017 of the second respondent, where the serious nature of crime, where the petitioner involved, would disclose the fact that the petitioner's presence at large, would certainly endanger to the public peace, especially in the locality where he resides, which of course, comes under the jurisdiction of the second respondent police, and therefore, on said satisfaction of the issue, the first respondent, after having recorded the grounds, for his satisfaction to invoke Section 122 of Cr.P.C, has passed an order of detention.

23. Therefore, the learned Public Prosecutor would submit that the impugned order of detention was passed by the first respondent strictly in accordance with law, especially as per the procedure contemplated under the Cr.P.C and on subjective satisfaction of the first respondent of course, after giving due opportunity of being heard to the petitioner. Therefore, the learned Public Prosecutor would state that the impugned order is justifiable and not required to be interfered with by this Court.

24. This Court has given its anxious consideration on the rival submissions made by the learned counsel appearing for the petitioner as well as the learned Public Prosecutor. This Court also has perused the materials placed before it for the perusal and considered all those materials placed by both sides.

25. No doubt that there are certain cases filed or pending against the petitioner under the second respondent police. Pursuant to the said pendency of cases, the first respondent, invoking the provisions of Cr.P.C, especially u/s 110(a), 117 r/w 113 of Cr.P.C., action was initiated and accordingly, the petitioner was directed to execute a bond worth Rs.5,000/- along with two sureties with a view to protect peace / tranquility in his locality.

26. In this regard, a show cause notice u/s 111 of Cr.P.C was issued on 19.7.2016. Next day i.e., on 20.7.2016, when the petitioner appeared before the first respondent, he was directed to execute a probationary bond. Accordingly, the petitioner had

executed a bond with two sureties and therefore, the petitioner was released accordingly. From that date, the concerned police i.e., the second respondent was instructed to keep a watch on the petitioner till the probationary period is over i.e., till 19.7.2017. However, within the said one year bond period, the petitioner seems to have involved in an incident which triggered for a filing of FIR on 01.01.2016 for the alleged offences u/s 294(b), 324, 506(ii) and 307 of IPC.

27. Pursuant to the said filing of FIR, the petitioner seems to have been apprehended and was sent to judicial custody. Only pursuant to the said incident, the second respondent / Inspector of Police seems to have sent a report on 09.1.2017 to the first respondent, requesting the first respondent to initiate action u/s 122 of Cr.P.C.

28. Only in that circumstances, the first respondent has issued a show cause notice on 27.1.2017 to the petitioner, which was served on the petitioner through jail authorities on the same day itself. In the show cause notice, the petitioner was directed to appear before the first respondent on 30.1.2017.

29. It is informed by both sides i.e, the learned counsel appearing for the petitioner as well as the Public Prosecutor that on 30.1.2017, the petitioner was produced before the first respondent by the jail authorities. On the same date i.e., 30.1.2017, the present impugned order of detention was issued.

30. On perusal of the impugned detention order, this Court finds that, after having narrated the incident said to have been taken place on 01.01.2017 as reported by the second respondent, through his report dated 09.1.2017, the first respondent has made the following findings and conclusions which can be usefully extracted hereunder for better appreciation of the issue :

" The counter petitioner Selvam @ Selvaraj is already involved in cases under reference 1,2 and 3 cited and the same is pending before the Executive Magistrate court. In the said circumstances, if he is allowed of remain at large, he would indulge in such anti social activities in future which would affect public tranquility. As he had infringed probationary bond dated 20.07.2016 for one year by involving in the case 4th cited, the Inspector of Police Anupparpalayam PS has requested to take appropriate action u/s 122 (1) (b) Crpc against him, in order to prevent him from indulging in further activities.

Therefore on consideration of all the case materials placed by the Inspector of Police, Anupparpalayam PS, and after the application of mind, I Hence, cancelling the probationary bond already executed by the counter petitioner, it is ordered that the counter petitioner M.Selvam @ Selvaraj (45) s/o Mari No.792, Samathuvapuram, Bharathi Nagar, Neripperichal Pooluvapatti, Tiruppur, Shall be kept in custody till 19.07.2017, i.e., till the completion of period of the probationary bond as per the maximum period of custody u/s 117 Crpc."

31. The first respondent, in fact, has stated about three incidents, where three FIRs were filed against the petitioner. However, the learned counsel for the petitioner would state that all these three incidents are past incidents which are no way connected with the bond in question. If at all any incident has been taken place subsequent to the bond in question, i.e., only incident that was happened on 01.01.2017, pursuant to which, the petitioner was arrested and put under judicial custody.

32. Based on the said arrest and judicial custody, whether the bond condition, as executed by the petitioner, has been violated by him or not to be looked into.

33. In this context, the first respondent in fact stated in the impugned detention order, as has been extracted above that, as the petitioner was already involved in three cases and if he is allowed to be remain at large, he would indulge in such anti-social activities in future, which would affect public tranquility. The first respondent has further stated that, since the petitioner had infringed probationary bond dated 20.7.2016 for one year, by involving the case 4th cited, the Inspector of Police, Annuparpalayam has requested to take appropriate action u/s 122 (1) (b) Cr.P.C against him.

34. The first respondent has further stated that therefore, on consideration of all the case materials placed by the Inspector of Police and after application of mind, he proceeded to cancel the probationary bond already executed by the petitioner.

35. On perusal of these findings given by the first respondent, one can easily ascertain that, whether the materials shown against the petitioner, about his activity which amount to violation of bond conditions, had been supplied, to the petitioner, atleast at the time when he appeared before the first respondent on 30.01.2017, or not?

36. No where in the findings or in the conclusions reached by the first respondent, in the impugned detention order, it has been mentioned that the petitioner has appeared before the first respondent and an opportunity of being heard was given to him by supplying the materials including the report of the Inspector concerned. In the absence of any such findings or averments in the impugned detention order, it can easily be presumed that, though the petitioner has appeared before the first respondent on the said date, as produced by the jail authorities, no effective opportunity of being heard seems to have been given to the petitioner. No documents or materials including the copy of the report of the Inspector, allegedly sent to the first respondent on 09.1.2017, requiring the first respondent to initiate proceedings against the petitioner u/s 122 of Cr.P.C, was given to the petitioner.

37. In this regard, the learned counsel appearing for the petitioner has produced a Judgment of this Court made in CrI.R.C.(Md).No.535 of 2016 dated 02.09.2016 in the matter of Balamurugan Vs. State rep. by the Inspector of Police (Law and Order), Palayamkottai Police Station, Tirunelveli City and another.

38. On a perusal of the said Judgment, this Court finds that almost in a similar situation or with identical stands as that of the present one, the detenu approached this Court by way of revision against the order of detention. The plea now has been raised by the petitioner's side, was similarly raised in the said case also. The learned Judge, who has dealt with the said revision case, after having elaborately discussed various aspects, including the power of the Deputy Commissioner of Police to act as Executive Magistrate within the meaning of Section 20(1) and 20(5) of the Cr.P.C, has proceeded further to deal with the grounds raised by the revision petitioner therein, who was also similarly placed as that of the present petitioner.

39. The learned Judge considering an earlier order passed by this Court in CrI.R.C.(MD).No.161/2016 dated 09.6.2016 in the matter of Murali @ Ponnuchamy Vs. The Subdivisional Executive Magistrate and another has held at paragraph 41 of the order which reads thus:

"41. Recently, in Murali @ Ponnuchamay Vs. The Sub Divisional Executive Magistrate and another [CrI.R.C.(MD) No.161 of 2016 dated 09.06.2016] as regards the nature of the power under Section 122 Cr.P.C. and the procedure to be followed, this Court has held as under: '8. Under the Code of Criminal Procedure, there are Judicial Magistrates and Executive Magistrates. In order to keep

peace, tranquility and also to prevent persons from indulging in any criminal activities, disturbing the peace of others, powers to take certain preventive measures have been given to the Executive Magistrates.

9. Under Section 117 Cr.P.C., upon satisfaction, the Executive Magistrate may direct such persons to execute a bond, but upto 3 years and when they breach the conditions, he can pass orders to detain them under Section 122 (1)(b) Cr.P.C

10. It is pertinent to note that such a detention is different from a detention authorised by a Court. Jailing a person by a Judicial Order is based on charges, evidence, trial and a detailed Judgment. However, in jailing a person, under Section 122 (1)(b) Cr.P.C., by the Executive Magistrate, there will be no charge, no evidence and no trial. Without any trial, the liberty of a person can be taken away by the Executive Magistrates. So, it is draconian in nature. An affront to civil and personal liberty.

11. Under Article 21, Constitution of India, no one shall be deprived of his life and liberty, except by procedure established by law. Thus Article 21 of the Constitution does not prevent the authorities to take away the liberty or life of a person. But, in doing so, they should follow prescribed procedures. The procedure must be fair, reasonable, not unjust, not arbitrary and not whimsical (See *Menaka Gandhi vs. Union of India* [1978 AIR 597]).

13. Now, in the case before us, the detention order has been passed by the first respondent under Section 122 (1)(b) Cr.P.C. As per the said provision, the Executive Magistrate, before ordering a person to be jailed, he shall be satisfied that the person has breached the bond conditions, the Executive Magistrate must also record the grounds for such proof. That means he must apply his mind and pass orders. He cannot pass orders mechanically. But, he need not write an elaborate Judgment like us. His Orders must show atleast briefly the grounds upon which, he has satisfied that the person has breached the bond executed by him. Under Section 122 (1)(b) Cr.P.C., if the said satisfaction is

not recorded, it will be presumed that the detention authority sending a person to jail is arbitrary, mechanical, not fair, unjust. The detention order must disclose the grounds of proof, otherwise, Court cannot see what has transpired in the mind of the Executive Magistrate in passing the detention order, more particularly, when these orders are revisable by the Sessions Judges.

17. As we have already stated, without a charge, without evidence and without trial, a person's liberty has been taken away and he has been jailed for 3 years under Section 122 (1) (b) Cr.P.C. So, the Executive Magistrate must be very serious of this matter. In a casual manner, personal liberty of a person has been curtailed. 1st respondent is bound to follow the law. There cannot be compromise with law, more particularly, when it is concerned with the liberty of a person.

18. Now, in this case, the impugned order cannot stand the test of law. It is vitiated. Thus, our interference is called for.?"

40. The learned Judge also considered yet another Judgment made in Pandi @ Suriyapandi @ Sarayapandi Vs. The Executive Magistrate/Assistant Collector, Trichy city and others [Crl.OP (Md)No.13878 of 2015 etc, dated 29.7.2015]. The learned Judge has observed the orders passed in the said Pandi's case and the relevant portion of the said Judgment, as has been extracted by the learned Judge, can also be usefully referred hereunder:

"43. The learned Judge accepted the contentions and set aside the detention order observing as under:

The petitioners herein were proceeded with Section 101 of the Criminal Procedure Code. Thereafter, orders have been passed under Section 117 of the Criminal Procedure Code, requiring the petitioners to execute a bond with sureties. The said order has been passed on the ground that it was proved that such an action is required and necessary for keeping peace and maintaining good behaviour. Accordingly, the petitioners have executed the bonds with sureties. Thereafter, by the orders impugned passed under Section 122 (1) (b) r/w 111 of the Criminal Procedure Code, the petitioners were directed to be kept under custody till 18.05.2018 and 27.04.2016 respectively for having violated the bonds

executed by them. Challenging the same, the petitioners have come forward with these petitions.

2. The learned counsel for the petitioners submitted that Section 122 of the Criminal Procedure Code speaks only about imprisonment in default of security. Such imprisonment can only be imposed only when there is breach of the bond proved to the satisfaction of the said Magistrate. The Magistrate concerned is duty bound to records grounds of such proof. Thereafter, on satisfaction should proceed to arrest and detain the person concerned in prison. But such an exercise has not been done. A perusal of the orders under challenge would show that they have been passed merely based upon the reports of the Inspectors of Police, which indicate that one case has been registered against the petitioner in CrI.O.P. (MD) No.13878 of 2015 and two cases have been registered against the petitioner in CrI.O.P. (MD) No.13957 of 2015.

3.The learned counsel also submitted the principle of natural justice will have to be looked into or otherwise the said provision would hit Article 21 of the Constitution of India.

4.The learned Government Advocate (Criminal side) would submit that in as much as the petitioner in CrI.O.P.(MD) No.13878 of 2015 is concerned, he involved in one case and the petitioner in CrI.O.P.(MD) No.13957 of 2015 has involved in two cases. Therefore, the orders impugned do not warrant interference.

5.This Court finds considerable force in the submission of the learned counsel for the petitioners. Section 122 of the Code of Criminal Procedure makes it clear that it is mandatory on the part of the Magistrate concerned to be satisfied of the breach of bond by the person concerned. Such breach has to be proved by the police. Therefore, there is an element of quasi judicial function involved. Admittedly, the order to be passed has got its own consequences, in as much as it intends to take the liberty of the person concerned. Therefore, it goes without saying that an opportunity of being heard has to be afforded. When it is stated that a breach has to be proved, then necessarily the person

against whom it is sought to be proved has to be heard. A satisfaction of the Magistrate has to be recorded in the order to be passed. Such satisfaction should be based upon the materials to be produced by the police officer concerned as well as the contra material, if any, that could be produced by the persons against whom the said provision is sought to be invoked. It is also for the reason, this proceedings is without prejudice to the other punishment that can be imposed against the accused persons.

6.A perusal of the impugned order would show the non-application of mind of the Executive Magistrate. Merely because certain cases have been registered against the petitioners, ipso facto, the same cannot be said to be sufficient ground leading to prove the breach of bond to the satisfaction of the Magistrate concerned that too without hearing the affected party.?"

41. The learned Judge at paragraph 44 of the Judgment has made the following observations:

44. Thus, a close reading of Section 122 (1)(b) Cr.P.C. would clearly show that the Executive Magistrate, in the instant case, the Deputy Commissioner of Police (L & O) in his capacity of Executive Magistrate shall refer the materials produced, must give an opportunity to the petitioner and apply his judicial mind and arrive at his subjective satisfaction that the petitioner has breached the security bond executed by him to keep good behaviour. He must also record grounds of such proof."

42. Ultimately, the learned Judge has made the following observations at paragraph 48 and 49 which also can be usefully referred hereunder:

"48. The said detention order does not show whether the revision petitioner was produced before the detaining authority/2nd respondent and whether he has participated in the enquiry. Whether his views were considered. Whether the petitioner has produced any materials. The impugned order is simply duplicating the report of the sponsoring authority/1st respondent. In para 4, the 2nd respondent referred to the several

past cases registered as against the petitioner, his earlier detention under Goondas Act. It is irrelevant for the purpose of a detention under Section 122(1)(b) Cr.P.C. It is concerned with the allegation whether the petitioner has breached the security bond executed by him on 09.06.2016. Again referring the past events is outside the scope of an enquiry under section 122(1)(b)Cr.P.C. However, the 2nd respondent has referred to the past cases, which are also not in proximity on point of time to the present enquiry. The 2nd respondent has simply read the report of the sponsoring authority/ 1st respondent and in a stray sentence he says that it is necessary to detain him.

49. However, if we look at Section 122(1)(b) Cr.P.C. the Executive Magistrate must record his grounds of satisfaction and he must say whether sufficient cause has been established. But he did not do so. It is complete non-application of mind. The detention order has been passed mechanically. Under such circumstances, a person's personal liberty has been taken away. It is in violation of Article 21 of the Constitution of India and the principles laid down by the Hon'ble Supreme Court in Maneka Gandhi Vs. Union of India [1978 AIR 597]), wherein the Hon'ble Supreme Court has held that deprivation of one's personal liberty by a procedure, which is 'unreasonable', 'unfair', 'unjust' and 'arbitrary' is against law. The impugned detention order has not been passed in accordance with law. Such taking of/deprivation of a person's personal liberty will not stand the test of law. The impugned order suffers from legality, propriety and it is vitiated."

43. From the reading of the aforesaid Judgment, which infact was issued on similar facts and circumstances as that of the present one, it is imperative that the Executive Magistrate before passing the detention order cancelling the bond executed by the detenu u/s 117 of Cr.P.C, has to record the grounds of proof that the petitioner/detenu has violated the bond conditions. In this regard, the Executive Magistrate shall record the reasons as to on what basis the Magistrate has come to a conclusion that the detenu has violated the bond conditions. Also an opportunity of hearing must be given to the

detenu. When the detenu is present before the Magistrate, he should be supplied with the materials which are going to be utilised against him for arriving at a just conclusion that he has violated the bond conditions. On supplying such materials in vernacular, (if the detenu is not knowing the language other than his mother tongue), his explanation should be obtained. In this regard, if the petitioner / detenu wishes to engage a lawyer on his side to plead on his behalf, to give a satisfactory explanation on the materials supplied to him, for seeking explanation by the Magistrate, such an opportunity to have a counsel by his choice, also to be provided to him.

44. Unless these measures are followed, it cannot be said to be a legally acceptable procedure to be followed before passing an order of detention.

45. Since the order of detention to be made by the Executive Magistrate by cancelling the bond, u/s 122(1)(b) of Cr.P.C, is an order without charge, without trial and without Judgment, as has been held in the Judgment above cited, the same cannot be made without the due procedures to be followed in this regard.

46. As has been rightly held by the learned Judge in the Judgment cited supra, since it is a personal liberty of an individual which is to be infringed, it can only be done under the procedure established under law within the meaning of Article 21 of the Constitution of India. Therefore, if there is any iota of violation of such procedure, as intended or contemplated under Article 21 of the Constitution, then certainly it can only be treated as violation of Article 21 of the Constitution and on that ground itself, such order of detention made u/s 122 (1)(b) of Cr.P.C would be vitiated. Here in the case in hand, though the petitioner admittedly, was present before the first respondent, there was no mentioning about his presence and the opportunity of being heard given to him by the first respondent, in the impugned order. Since there is no whisper about the presence of the petitioner as well as the opportunity given to him in the order, the further course of action of supplying the documents and getting views or reply from the petitioner /detenu, in this case, would not have happened. Moreover, it is not the definite case of the respondent that such an opportunity was given to the petitioner and such a procedure as contemplated, has been followed scrupulously, in this regard. In the absence of all these ingredients, as the order of detention made by the first respondent through the impugned order, will upset the personal liberty of the petitioner, as guaranteed under Article 21 of the Constitution, this Court has to construe the strict sense of non following of such procedure of being heard and the satisfaction of the Magistrate in this regard.

47. Therefore, for all these reasons, this Court is of the firm view that the impugned order cannot be sustained and accordingly, it is liable to be set aside.

48. In the result, the impugned order is set aside. The revision is allowed. The petitioner shall be set at liberty forthwith if his further detention is no longer required in connection with any other case or proceedings pending against him. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kua

To

- 1.The Executive Magistrate cum
Deputy Commissioner of Police,
(Law & Order, Crime and Traffic),
Tiruppur City.
- 2.The Judicial Magistrate No.I,
Tiruppur City.
- 3.Through The Chief Judicial Magistrate No.I,
Tiruppur City.
- 4.The Superintendent,
Central Prison, Coimbatore.
- 5.The Inspector of Police,
Anupparpalayam Police Station,
Tiruppur City.
- 6.The Public Prosecutor,
High Court, Madras.
- 7.The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.C.Prabakaran, Advocate, S.R.No.46530

Cr1.R.C.No.505 of 2017

KJ(CO)
CA(05/07/2017)