

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2017

Coram

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl. R.C.No.620 of 2017
and Crl.M.P.No.5570 of 2017

Victor

... Petitioner

//vs//

State Rep. By Inspector of Police,
J-11, Kannagi Nagar (L & O) Police Station,
Chennai.

.... Respondent

Prayer: Criminal Revision Petition filed under Section 397 and 401 of the Code of Criminal Procedure to call for the records on the file of the Executive Magistrate Cum Deputy Commissioner of Police, Adayar Range, Chennai in M.P.No.2 of 2017 in ந.க.எ.22/செ.நடுகா.து. Adayar District/2016 dated 04.04.2017 and set aside the order dated 04.04.2017.

For Petitioner : Mr. S.Senthilvel.

For Respondent : Mr.R.Ravichandran
(Gov. Advocate (Crl.side))

ORDER

Challenging the order passed under Sec.122 (1) (b) of Criminal Procedure Code, the present Criminal Revision Case has been filed.

2. The petitioner is the accused in a Criminal Case, he is an habitual offender, and a proceedings under Section 110 of Cr.P.C has been initiated in Crime No.1940 of 2016 on J11 Kannagi Nagar Police station and he was directed to execute a security bond for his good behavior. Pursuant to the same, the petitioner also executed security bond on 03.02.2017 for a period of six months. But, subsequently, on 7.3.2017, the petitioner involved in another Crime No.500 of 2017 in the same police station for an offence under Section 8c r/w 20(b)(ii)(B) of NDPS Act for possession of Narcotic drugs and he was remanded for judicial custody. In the circumstances, since the petitioner committed breach of bond, proceedings was initiated under Section 122 Cr.P.C. by the Executive Magistrate/Deputy

Commissioner of Police, Adyar. Since the petitioner was in custody, he was produced on Prisoners Transit warrant (P.T.Warrant) before the Executive Magistrate on 4.4.2017 and an enquiry was conducted on that day and evidence against him was explained to him in Tamil, but he denied the same and on the same day, the impugned order has been passed to order him to detain in prison untill the expiry of bond period namely 148 days. Challenging the same, the Criminal Revision has been filed by the petitioner.

3. Heard Mr.S.Senthilvel, learned counsel for the petitioner and Mr.R.Ravichandran, Government Advocate (Crl.Side), learned counsel for the respondent.

4. Learned counsel for the petitioner submits that the respondent without conducting proper enquiry as contemplated under Section 122 Cr.P.C, passed the impugned order mechanically and the order is in total violation of principles of natural justice and violation of 122(3) Cr.P.C.

5. Per contra, the learned Government Advocate (Crl.side) submits that the enquiry was conducted by the respondent on 4.4.2011, wherein the petitioner was produced on P.T. Warrant and in his presence, enquiry was conducted. After hearing the petitioner, the impugned order has been passed and there is no mandatory violation and he supported the order passed by the respondent.

6. Considered the rival submissions made by both the learned counsels. Admittedly, the petitioner after executing the bond, involved in another offence within a period of one month and he has committed breach of the bond, and he was also arrested. Before passing any order under Section 122(1)(b) of Cr.P.C., a reasonable opportunity should be given to the petitioner. In the instant case, the enquiry was conducted on 04.04.2017. On that date, the petitioner was produced by the respondent by a P.T.warrant and only evidence against him was read over and explained to him. Immediately on the same day, the impugned order has been passed without giving any sufficient opportunity to the petitioner to raise his objection, which is in total violation of mandatory requirements under Section 122 Cr.P.C and also in violation of principles of natural justice. In the above circumstances, the impugned order is liable to be set aside.

7. In the result, this Criminal Revision Case is allowed and the order dated 04.04.2017 made in M.P.No.2 of 2017 in ந.க.எ.22/செ.நடு.கா.து. Adayar District, on the file of the Executive Magistrate Cum Deputy Commissioner of Police, Adayar Range, Chennai is set aside. The accused is directed to be released forthwith, unless his custody is required in

connection with any other case. Consequently, connected miscellaneous petition is closed.

Sd/-d/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

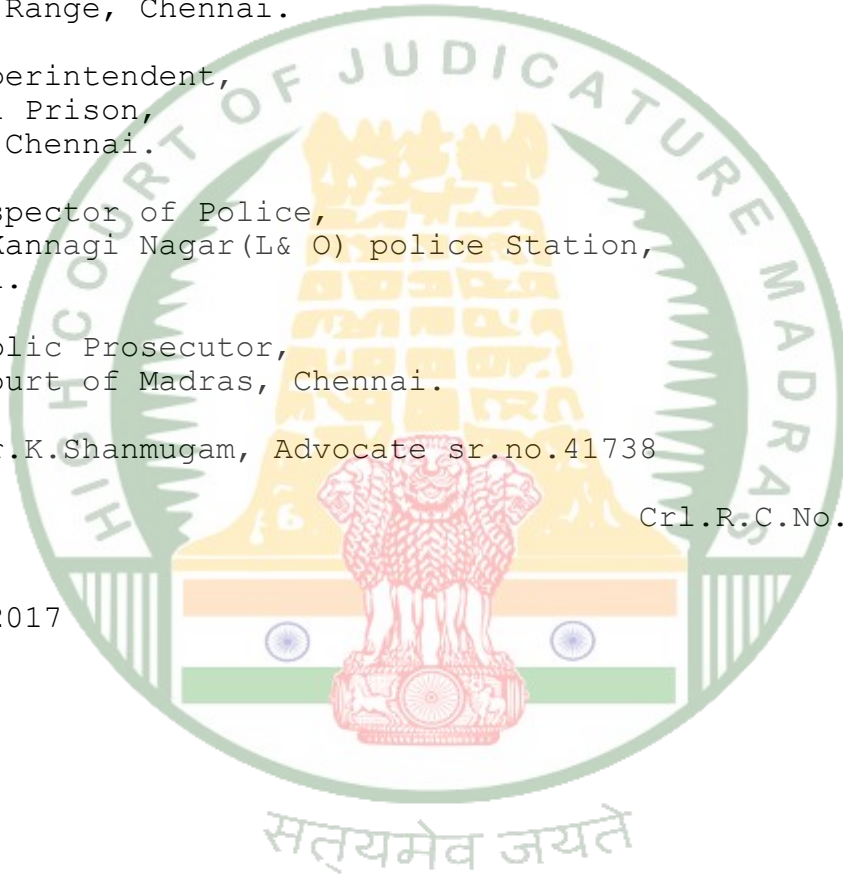
To

1. The Executive Magistrate Cum Deputy Commissioner of Police,
Adayar Range, Chennai.
2. The Superintendent,
Central Prison,
Puzhal, Chennai.
3. The Inspector of Police,
J-II, Kannagi Nagar (L& O) police Station,
Chennai.
- 4 .The Public Prosecutor,
High Court of Madras, Chennai.

+1cc to Mr.K.Shanmugam, Advocate sr.no.41738

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AD(CO)
NR 19/06/2017



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