

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2017

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THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

Crl.R.C.No.969 of 2017

and

Crl.M.P.No.9099 of 2017

Saravanan @ Thothuvai Saravanan Petitioner

Vs.

1.Executive Magistrate -cum-
Deputy Commissioner of Police,
Adayhar District.
Chennai.

2.State: Inspector of Police,
J-11, Kannagi Nagar Police Station,
Chennai. ... Respondents

Criminal Revision filed under Sections 397 and 399 Cr.P.C. to call for the entire records on the file of the 1st respondent/Executive Magistrate and Deputy Commissioner of Police, Adayar District, Chennai, in M.P.No.6 of 2017 in Na.Ka.No.132.Nir.Executive Magistrate Cum Deputy Commissioner of Police, Adayar District, in Cr.No.419 of 2017 and to set aside the order dated 28.04.2017.

For Petitioner : Mr.V.Parthiban
for Mr.M.Rajavelu

For Respondents : Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

This revision case has been filed against the order passed by the 1st respondent/Executive Magistrate and Deputy Commissioner of Police, Adayar District, Chennai, in M.P.No.6 of 2017 in Na.Ka.No.132.Nir.Executive Magistrate and Deputy Commissioner of Police/Adayar District/2017, dated 28.04.2017.

2.According to the respondents, the petitioner had been apprehended on suspicion on 25.02.2017 by the 2nd respondent police and on enquiry, it was found that the petitioner had

already involved in a criminal case in Crime No.112 of 2010 for the offences punishable under Sections 147, 148, 302 read with 109 of IPC on the file of J-11, Kannagi Nagar Police Station, Chennai. In view of the said involvement on the part of the petitioner, the 2nd respondent seems to have requested the 1st respondent seeking to execute a bond from the petitioner, in order to ensure his good behaviour, without which he may be the root cause in the deterioration of law and order in that locality.

3. Accordingly, the petitioner had been directed to execute a bond and he executed the same on 17.03.2017 for a period of six months.

4. It is the further case of the respondents that during the bond period, on 15.04.2017, a complaint was filed by one Selvam against the petitioner and other two persons alleging that the petitioner had beaten him. Pursuant to the said complaint, the 2nd respondent arrested the petitioner and other two persons on 15.04.2017 and they have been remanded to the judicial custody. Thereafter, the 2nd respondent seems to have requested the 1st respondent with documents to show that the petitioner had involved in a criminal case during the bond period and therefore against whom action to be taken by invoking Section 122(1)(b) of the Code of Criminal Procedure (hereinafter referred to as the Code).

5. Accordingly, the 1st respondent had summoned the petitioner to appear before him on 27.04.2017 and accordingly, the petitioner was produced before the 1st respondent and on that day, the documents pertaining to the case had been given to the petitioner and according to the impugned order, the 2nd respondent as well as the complainant Selvam had given statements. Recording the said statements, the petitioner was directed to appear before the 1st respondent on the next day i.e., on 28.04.2017 and on the said date, the petitioner was again produced before the 1st respondent. On that day, the petitioner was questioned as to whether he involved in the said crime, as per the complaint of Selvam, for which, the reply of the petitioner was that he was present in the place of occurrence, but he did not involve in any crime. However, not satisfied with the answer given by the petitioner, the 1st respondent, in the impugned order invoking Section 122(1)(b) of the Code, cancelled the said bond for good behaviour executed by the petitioner on 17.03.2017 and directed to be in judicial custody for the remaining period of 152 days (180 days - 28 days) from 28.04.2017. Against the said order dated 28.04.2017 sending the petitioner to the judicial custody by invoking Section 122(1)(b) of the Code, the present revision has been filed.

6.I have heard Mr.V.Parthiban, learned counsel appearing for the petitioner as well as Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondents.

7.The learned counsel appearing for the petitioner would state that the petitioner had not in fact involved in any crime during the bond period as alleged by the respondents. In respect of the alleged occurrence said to have been taken place on 15.04.2017 is concerned, the said Selvam, who made complaint against the petitioner and two others, being the close relatives of the petitioner, had given an affidavit before the Sessions Court, Chengalpattu, on 26.07.2017, at the time of consideration of bail application filed by the petitioner and two others in Crime No.750 of 2017 on the file of the said Court.

8.In the said affidavit, which has been filed before the said Court, the complainant Selvam had stated that the said alleged incident taken place on 15.04.2017 has been compromised between the parties and therefore, he had filed the said affidavit conveying his desire to grant bail to the said persons including the present petitioner. In view of the said submission made through the affidavit filed by the petitioner, bail was granted to the petitioner and other persons by the Sessions Court, however, because of the impugned order, the petitioner has been in jail for the past five months.

9.I have considered the submissions made by the learned counsel appearing for the petitioner as well as the respondents and also have gone through the materials placed before this Court for its perusal.

10.Insofar as the reasonings given by the 2nd respondent is concerned, because of the complaint given by Selvam, a case was registered, pursuant to which, he was sent for judicial custody and subsequently, he has come out on bail. However, the 1st respondent has given reasons for passing the impugned order in the order itself stating that, when the petitioner was questioned on 28.04.2017, he had stated that he was present at the place of alleged occurrence, but he did not involve in any crime. Not satisfied with the said answer given by the petitioner, the 1st respondent invoked Section 122 (1)(b) of the Code by cancelling the bond executed by him and sending the petitioner to the judicial custody for the remaining bond period.

11.From the impugned order, it is found that except the 2nd respondent, i.e., the Inspector of Police and the said Selvam, who made complaint against the petitioner, no other complaint seems to have been given. Since the complainant Selvam has come forward to settle the issue between the petitioner and the complainant, the matter has been settled as

they are the close relatives to each other. Except this complaint, no other case has been made out or found against the petitioner to the satisfaction of the 1st respondent to invoke the said provision under Section 122(1)(b) of the code for cancellation of the bond and to send him for the judicial custody.

12. In the absence of proper consideration as to the materials which are specified by the 1st respondent to arrive at such a conclusion, the order for judicial custody cannot be passed in a mechanical way by the 1st respondent. In this regard, this Court has already given its view in a similar situation, where also an order, by invoking Section 122(1)(b) of the Code, was passed.

13. In this regard, I have dealt with a similar circumstance, in the case of Selvam @ Selvaraj vs. the Executive Magistrate -cum- Deputy Commissioner of Police, (Law and Order, Crime and Traffic), Tiruppur city and another in CrI.RC.No.505 of 2017, dated 03.07.2017 {2017 (3) MLJ (CrI) 430}, wherein, at Paras 45 and 46, I have given the following observations.

"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."

14.If the said principle is taken into account and applied in the present facts of the case, the order impugned, invoking Section 122(1)(b) of the Code against the petitioner and sending him to judicial custody without enquiry and without trial, as referred to in the Judgment cited above, in the opinion of this Court, is unsustainable and accordingly, the same is liable to be interfered with.

In the result, the Criminal Revision Case is allowed. The impugned detention order in M.P.No.6 of 2017 dated 28.04.2017 passed by the Executive Magistrate and Deputy Commissioner of Police, Adayar, Chennai, is set aside. Hence, the petitioner / accused is directed to be released forthwith, unless he is required in connection with any other case. The bail bond, if any executed by the accused, shall stand cancelled. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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To

1. The Executive Magistrate -cum- Deputy Commissioner of Police, Adayar District, Chennai.
- 2.The Inspector of Police, J-11 Kannagi Nagar Police Station, Chennai.
3. The Superintendent Central Prison, Puzhal, Chennai.
4. The Public Prosecutor, High Court, Madras.

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NRI (CO)