

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

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THE HONOURABLE DR.JUSTICE.S.VIMALA

Crl.R.C.No.1582 of 2017
and Cr.M.P.No.16035 of 2017

Sekar @ Jabasekar

... Revision Petitioner

Vs

The Inspector of Police,
S-14, Peerkanakaranai Police Station,
Chennai – 45.

... Respondent

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C. praying to set aside the order passed by the learned Executive Magistrate cum Deputy Commissioner of Police, St. Thomas Mount, by its proceedings in M.P.No.406 of 2017 in R.O.C.No.1/Sec.Pro./DC-STM/2017 dated 25.07.2017.

For Petitioner

M/s.M.Mujibur Rahman

For Respondent

Mr.V.Arul

Additional Public Prosecutor

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ORDER

The petitioner herein is the accused in Cr.No.1486 of 2017 for the offences under Section 4(a) of Explosive Substances Act 1908 & 427 IPC and Section 3 of TNPPDL Act and now he is in custody from 15.07.2017. Challenging the same, the

Criminal Revision Case has been filed by the accused.

2. Brief facts:

Originally, a case has been registered against the petitioner in Cr.No.1444 of 2017 under Section 110 Cr.P.C. and on issuance of summons, on 13.07.2017, he appeared before the Executive Magistrate cum Deputy Commissioner of Police, St. Thomas Mount and executed a bond for a sum of Rs.10,000/- to maintain good behaviour in his locality for a period of six months from the date of execution of the bond. Thereafter, it is alleged that the petitioner, on 15.07.2017, indulged in the offence under Section 4(a) of Explosive Substances Act 1908 & 427 IPC and Section 3 of TNPPDL Act, which led to the registration of case in Cr.No.1486 of 2017. Since the petitioner had indulged in the other offences immediately to the execution of bond, the Executive Magistrate cum Deputy Commissioner of Police, St. Thomas Mount has passed the order, ordering the petitioner to be imprisoned till the completion of the period of six months as mentioned in the bond executed by the case in Cr.No.1444 of 2017. Challenging the same, the accused has filed this Criminal Revision Case.

3. The main contention of the learned counsel for the revision petitioner/accused is that before cancellation of the bond executed in connection with the case in Cr.No.1444 of 2017, the revision petitioner/accused was not given an opportunity of hearing as to why the bond executed by him should not be cancelled in view of the subsequent crime committed by him. Hence, the order passed by the first respondent is legally unsustainable. It is further submitted by the learned counsel for the revision petitioner/accused that the petitioner/accused is nearing the end of his incarceration period.

4. Heard the learned Additional Public Prosecutor appearing for the respondent.

5. A perusal of the order passed by the the Executive Magistrate cum Deputy Commissioner of Police, St. Thomas Mount, would go to show that the accused/revision petitioner, in the case in Cr.No.1444 of 2017, executed a bond to maintain good behaviour for a period of six months. The petitioner allegedly had indulged in other offences on 15.07.2017 and a case has been registered in Cr.No.1486 of 2017 for the offence under Sections 4(a) of Explosive Substances Act 1908 & 427 IPC and Section 3 of TNPPDL Act.

6. It is contended by the learned counsel for the accused that the Executive Magistrate cum Deputy Commissioner of Police, St. Thomas Mount, has to give opportunity of hearing to the accused as to why the bond executed by him should not be cancelled in view of the offence committed by him and the opportunity has not been afforded to him.

7. To appreciate the contention, it is necessary to look into the necessary provisions or law.

8. In the case of Murali @ Ponnuchamay Vs. The Sub Divisional Executive Magistrate and another [Crl.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.

12. 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. At that time, the respondent has not given any opportunity of

hearing to the accused as to why the bond executed by him should not be cancelled in view of the offence committed by him. Once the opportunity of hearing is not given to the parties, then, it is pure violation of natural justice.”

As per the decision of this court cited supra, granting of opportunity is mandatory before cancellation of the bond and if it is not done, it would amount to violation of natural justice, thereby, the duty is cast upon the Court to cancel the order. In this case also, the opportunity of hearing was not given to the accused before the cancellation of the bond. Hence, the order passed by the Executive Magistrate cum Deputy Commissioner of Police, St. Thomas Mount is liable to be set aside and it is set aside accordingly.

6. Accordingly, the Criminal Revision Case is allowed. The order dated 25.07.2017 passed by the learned Executive Magistrate cum Deputy Commissioner of Police, St. Thomas Mount, in M.P.No.406 of 2017 in R.O.C.No.1/Sec.Pro./DC-STM/2017 is hereby set aside. Consequently, connected miscellaneous petition is closed.

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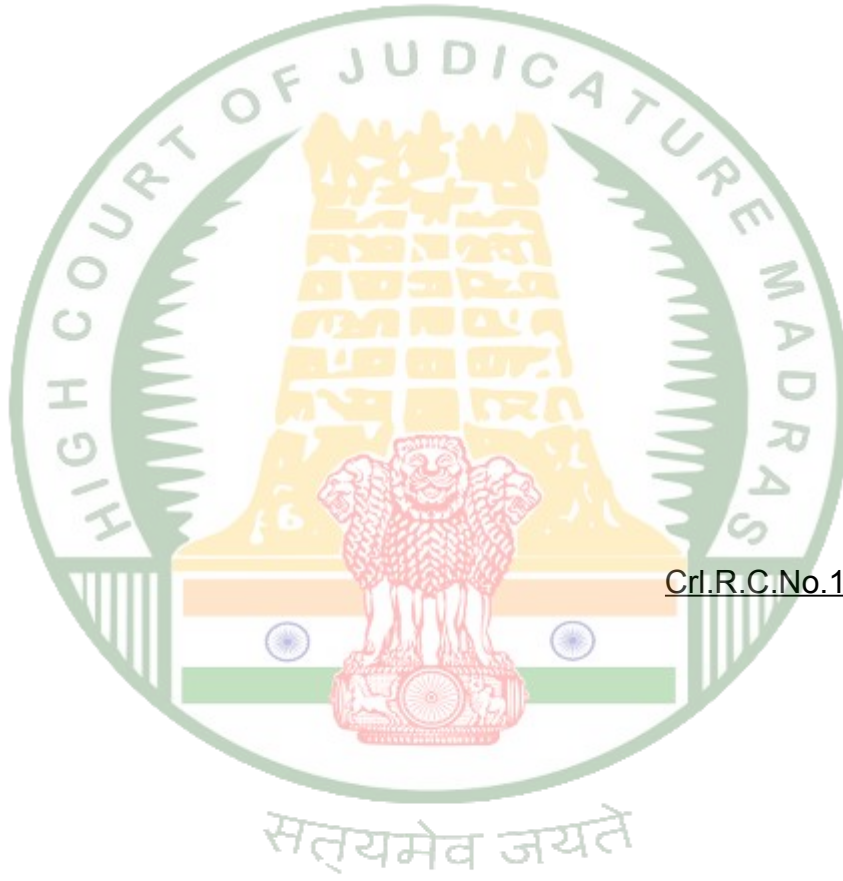
Note : Issue order copy on or before 28.12.2017

To

The Inspector of Police,
S-14, Peerkanakaranai Police Station,
Chennai – 45.

Dr. S.VIMALA, J.,

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