



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.04.2017

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THE HONOURABLE MR.JUSTICE **A.M.BASHEER AHAMED**

Cr1.RC(MD)No.34 of 2017

[Orders Reserved on 04.04.2017]

A.Ambika : Petitioner / Accused's wife

Vs.

1.The Sub-Divisional Magistrate,
Revenue Divisional Officer,
Uthamapalayam,Theni District.

2.The State Rep by its,
The Sub-Inspector of Police,
Bodo Town Police Station,
Theni District.

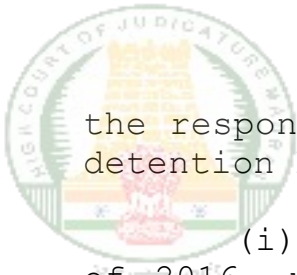
3.The Superintendent of Prison,
Madurai Central Prison,
Madurai. : Respondent / Complainant

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records relating to the order of the 1st respondent by his proceedings in Na.Ka.No.A2/4344/2016, dated 09.12.2016 and set aside the same as illegal and allow the Criminal Revision Petition, as prayed for.

For Petitioners : Mr.T.Sabeen Mohamed
For Respondents : M/s.P.Kandasamy,
Govt.Advocate (crl.side)

ORDER

Challenging the legality and propriety of the order of detention passed by the first respondent in his proceedings in Na.Ka.No.A2/4344/2016, dated 09.12.2016, detaining the detenu upto 12.04.2017, who is confined in Central Prison, Madurai, the present Revision has been filed by wife of the detenu, praying to set aside the order of detention, dated 09.12.2016, as illegal.



the respondent would submit the background of the order passed for detention by the first respondent as follows:-

(i) The second respondent registered a case in Crime No.901 of 2016, under Section 110 of Cr.P.C., since the husband of the petitioner frequently involved in criminal cases and the same was forwarded to the first respondent, for necessary action and after perusal of records produced by the second respondent Police, the first respondent, after enquiring the husband of the petitioner and the witnesses coming to the subjective satisfaction, directed the husband of the petitioner to execute a bond worth Rs.5000/- for a period of six months, for keeping peace or maintaining good behavior and as such, a bond was executed on 13.10.2016, by the husband of the petitioner.

(ii) The husband of the petitioner again involved in a criminal offence during the said period mentioned in the bond and a case was registered by the second respondent Police in Crime No.1028 of 2016, for the offence under Section 387 of IPC., on the basis of the complaint made by one Mathan Kumar, residing at Devaram and was arrested by the second respondent Police and remanded to judicial custody. The said fact was brought to the notice of the first respondent and the first respondent, after due enquiry, summoned the witnesses and confirmed the subsequent offence committed by the husband of the petitioner, passed the impugned order of detention, dated 09.12.2016.

3. The learned counsel appearing for the petitioner would contend that the impugned order of the first respondent is on the face of it illegal, erroneous and contrary to the procedures contemplated under the Code of Criminal Procedure that no opportunity was given to the detenu to defend the allegation made by the second respondent before passing the impugned order, dated 09.12.2016; that no preliminary order was passed under Section 110 of Cr.P.C., before passing the impugned order and without passing the preliminary order and serving the said order, the first respondent passed the final order under Section 122(1)(b) of Cr.P.C.; that the second respondent Police has no jurisdiction to register a criminal case under Section 110 Cr.P.C., which can be invoked by the Executive Magistrate and hence, the initiation of initial proceedings by the first respondent in Na.Ka.No.860 of 2016/A2, dated 13.10.2016 itself is illegal; that the first respondent directly passed the order, dated 13.10.2016, under Section 110 of Cr.P.C., without following the procedures enumerated under Sections 112 to 116 of Cr.P.C., and without summoning and examining any witnesses, the husband of the petitioner was forced to execute a bond for a period of six months and therefore, the entire proceedings initiated by the first respondent in passing the impugned order is illegal and that without applying his mind and satisfaction the first respondent without any power to be conferred under Section 20(5) of Cr.P.C.,



mechanically passed the impugned order and hence, such order is liable to be set aside. The learned counsel for the petitioner has relied on the following decisions rendered by this Court, in support of his contention:-

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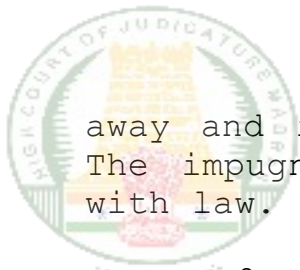
(1). The Order dated 01.02.2017, passed in CrI.R.C.(MD) No.805 of 2016 between R.Ithayathulla and The Executive Magistrate cum Deputy Commissioner of Police, Law and Order, Madurai City and two others; (2). The Order dated 01.02.2017 passed in CrI.R.C(MD) No.845 of 2016 between K.Sumathi and The Executive Magistrate cum Deputy Commissioner of Police, Law and Order, Madurai City and two others.

4. Perused the impugned order, dated 09.12.2016, passed by the first respondent and also the intimation and warrant of commitment issued to the 3rd respondent produced by the petitioner and heard the rival submissions made by either side.

5. No records or materials in respect of registration of a criminal cases in Crime No.901 of 2016 and Crime No.1028 of 2016, by the second respondent for perusal of this Court and also the order, dated 13.10.2016, passed under Section 110 of Cr.P.C., by the first respondent, as mentioned in the impugned order, dated 09.12.2016, is produced by the respondent even at the time of hearing this case. No materials is produced by the second respondent to substantiate the contentions raised in his counter statement.

6. The second respondent has stated in his counter statement that the first respondent enquired the husband of the petitioner and also the witnesses before passing the order by the first respondent directing the husband of the petitioner to execute a bond for maintaining good behavior, but no material or record is produced to substantiate the said allegations. It is further stated that before passing the impugned order, the first respondent summoned the witnesses and enquired about the subsequent offence committed by the husband of the petitioner herein, but no record is produced by the respondent.

7. The impugned order does not reveal the fact whether the detenu was produced before the detaining authority for hearing and whether the detenu has participated in the enquiry and whether his views were considered and whether he has produced any materials before passing the impugned order. The first respondent did not record the grounds of his satisfaction in the impugned order, as stated in Section 122(1)(b) of Cr.P.C. The impugned order is simply duplicating the report of the second respondent. It is a complete non-application of mind and the detention order has been passed mechanically by the first respondent. Under such circumstances, a person's personal liberty has been taken



away and it is in violation of Article 21 of the Constitution. The impugned detention order has not been passed in accordance with law.

8. In Menaka Gandhi Vs. Union of India reported in (AIR 1978 SC 597) wherein the Hon'ble Apex Court has held that "deprivation of one's personal liberty by a procedure, which is 'unreasonable', 'unfair', 'unjust' and 'arbitrary' is against law. Such taking of / deprivation of a person's liberty will not stand the test of law. Hence, the impugned order suffers from legality, propriety and it is vitiated."

9. The detention order has been passed mechanically without following the procedures mandate under Section 122 Cr.P.C., On perusal of the impugned order it is stated that the bond was executed by the husband of the petitioner for maintaining the good behavior, but Section 122(1)(b) Cr.P.c., speaks about breach of bond executed for maintaining the public peace alone.

10. In the light of the above discussion and decisions, which are squarely applicable in the case on hand, the Revision is allowed and the impugned order of detention, passed by the first respondent in Na.Ka.No.A2/4344/2016, dated 09.12.2016, is set aside and the 3rd respondent / the Superintendent of Prison, Central Prison, Madurai, is directed to set at liberty the husband of the petitioner viz., B.Arunpandi forthwith, if his further detention is no longer required in connection with any other case or proceedings.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1.The Sub-Divisional Magistrate,
Revenue Divisional Officer,
Uthamapalayam,Theni District.

2.The Superintendent of Prison,
Madurai Central Prison,Madurai.

3.The Sub-Inspector of Police,
Bodo Town Police Station,



4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

5.The Record Keeper,
Criminal Section
Madurai Bench of Madras High Court.

+1cc to M/S.T.Sabeen Mohamed, Advocate SR.No.50790

Pre-Delivery Order made in
Crl.RC(MD)No.34 of 2017
Dated:- 07.04.2017

JM/SKN RSK/SAR 2/07.04.2017/5P/7C