



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.04.2018

DELIVERED ON : 28.04.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.877 of 2017

and

Crl. M.P.(MD)No.10773 of 2017

Sethupathi Karthick @ Thakkali Karthick

.. Petitioner

Vs.

1.The Administrative Executive Magistrate,
Cum Deputy Commissioner of Police, (L & O),
Madurai City,
Madurai.

2.The Inspector of Police,
Jaihindpuram Police Station
Madurai City,
Madurai.

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

.. Respondents

Prayer : This revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records relating to the order passed by the learned Administrative Executive Magistrate Cum Deputy Commissioner of Police, (L & O) Madurai City, Madurai in M.C.No.278/Ni.Se.Na & Ka.Thu.Aa/Ma.Maa/2017 dated 11.10.2017 and set aside the same.

For Petitioner

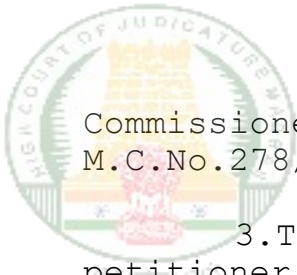
: Mr.C.Susi Kumar

For Respondents

: Mr.K.Suyambulinga Bharathi
Government Advocate(Crl. Side)

ORDER

Heard Mr.C.Susi Kumar, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl. Side) appearing for the respondents.



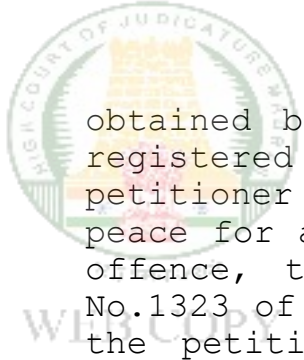
Commissioner of Police, (L & O) Madurai City, Madurai in M.C.No.278/Ni.Se.Na. & Ka.Thu.Aa/Ma.Maa/2017 dated 11.10.2017.

3.The second respondent registered a case against the petitioner in Crime No.1161 of 2017 for the offences under Sections 110(e) of Cr.P.C., and issued a show cause notice 06.08.2017 under Section 111 of Cr.P.C., calling upon the petitioner to execute a bond for an amount of Rs.1,00,000/-. On receipt of the show cause notice, the petitioner has appeared before the first respondent on 07.08.2017 and the enquiry was posted on 08.08.2017. After enquiry, the first respondent passed an order under Section 117 of Cr.P.C., directing the petitioner to give security. The petitioner was released on his executing a bond for a sum of Rs.1,00,000/- on 08.08.2017 for keeping peace. But the petitioner was involved in another case in Crime No.1323 of 2017 dated 30.09.2017 registered by the respondent under Sections 341, 294(b), 323 and 506(ii) of IPC.

4.On the side of the petitioner, it is stated that the petitioner along with other two persons drove a two wheeler in rash and negligent manner and the co-accused asked the defacto complainant's uncle, who was walking along the road to move further and he questioned the same and thereby, the petitioner and other accused followed him and assaulted him. The complainant, who came in search of his uncle found that on 29.09.2017 at about 00.45 a.m., the accused and other co-accused came in two wheeler and assaulted his uncle with stone. Thereafter, the complainant lodged a complaint before the second respondent. After registration of the case, the petitioner was arrested by the second respondent on 30.09.2017. Thereby, the second respondent sent a report to the first respondent, recommending to detain the petitioner under Section 122 (1)(b) of Cr.P.C., Therefore, a show cause notice was issued. In the show cause notice, the date of enquiry was not stated and the petitioner was not served with the relevent papers. The petitioner was served with notice on 11.10.2017 through the Additional Superintendent, Central Prison, Madurai and after two days on 13.10.2017, the petitioner was produced before the first respondent and subsequently, he was detained in jail. Only on perusal of the impugned order, the petitioner came to know that the first respondent revoked the bail bond executed by the petitioner.

5.The impugned order is to be quashed as the first respondent did not record any reason or grounds for detention and the detention order has been passed mechanically and the show cause notice was only issued in jail whereas the relevant papers were not issued. The ground was also not stated in the order and no date of hearing was fixed in the notice. The petitioner was already released on bail in Crime No.1323 of 2017 on 14.10.2017 in Cr.M.P.No.4504 of 2017. He prayed that the direction issued by the first respondent is liable to be dismissed.

6.On the side of the respondent, it is stated that there are two cases against the petitioner and the bond to keep peace is



obtained by the petitioner. The FIR in Crime No.1161 of 2017 is registered under Section 110(e) of Cr.P.C., dated 18.08.2017. The petitioner has executed the bond before the first respondent to keep peace for a period of one year. Violating the bond and indulging in offence, the FIR was registered against the petitioner in Crime No.1323 of 2017. Though an opportunity was given to the petitioner, the petitioner has not cross examined the witness. Only on the examination of the witness, the bond executed under Section 110(e) Cr.P.C., is cancelled by the first respondent under Section 122(1) (b) of Cr.P.C., It is further stated that there is no violation of natural justice as the petitioner was given sufficient opportunity and only after examination of witness, the order under Section 122 (1)(b) of Cr.P.C., is passed challenging the allegation that the order is per-determined one is also incorrect. The order under Section 122(1)(b) of Cr.P.C., is different as a separate one which is only a breach of bond.

7.On the side of the petitioner, it is further stated that the respondents predeterminedly cancelled the bond. Only after issuing Non Bailable Warrant, the enquiry was conducted on 11.10.2017, which is a violation of article 21 and 22.

8.The learned counsel for the petitioner placed reliance on the order passed by this Court in the case of *Sathish Kumar Vs. State Rep. By the Inspector of Police, Tiruchirapalli City* and another reported in CDJ 2017 MHC 5939, which reads as follows:

" The contents of the proceedings, dated 21.03.2017 would show the predetermination of cancelling the bond for breach and passing an order of detention under Section 122 (1)(b) of Cr.P.C., Before passing the impugned order of detention, the 2nd respondent herein informed the petitioner through his proceedings, dated 21.03.2017 that he is going to detain him by cancelling the bond executed by the petitioner before passing the impugned order of detention. The Executive Magistrate/2nd respondent herein without arriving at a subjective satisfaction and without recording the grounds has passed the impugned order of detention against the petitioner mechanically."

9.Records perused. The petitioner executed a bond under Section 110(e) Cr.P.C., for a sum of Rs.1,00,000/- to keep peace for a period of one year. Within the completion of the one year, the petitioner was involved in another case in Crime No.1323 of 2017 dated 30.09.2017. The show cause notice was issued and after the examination of the witnesses, the first respondent came to the conclusion that the petitioner is to be detained under Section 122 (1)(b) of Cr.P.C., and the bond executed by the petitioner was cancelled. The petitioner is in custody from 08.08.2017. The offence against the petitioner in Crime No.1323 of 2017 are under Sections 341, 294(b), 323 and 506(ii) of IPC. The petitioner is already in custody for past six months I.e, from 30.09.2017.



10. Considering the aforesaid submission made by the learned counsel for the petitioner, considering that the petitioner is in custody for past six months and also considering the nature of offence, this petition is allowed by setting aside the impugned order passed by the first respondent. No Costs. Consequently, Crl. M.P. (MD) No. 10773 of 2017 is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Administrative Executive Magistrate,
Cum Deputy Commissioner of Police, (L & O),
Madurai City,
Madurai.

2. The Inspector of Police,
Jaihindpuram Police Station
Madurai City,
Madurai.

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

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

+1cc to Mr. M. Subash Babu , Advocate, SR.No.64764

Copy to:-

The Section Officer, (2copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai

mrn
RL/8C/4P/JC/SAR3/2/5/2018