

**BAIL SLIP**

Saravanakumar @ Sappani Saravanan S/o.Narayanan aged about 47 years has granted an interim bail for a period of three days from 16.09.2018 to 18.09.2018 by the order of this Court made in CrI.M.P. (MD)No.7388 of 2018 in CrI.OP(MD)No.16345 of 2018.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C. (MD)No.558 of 2018

and

CrI.M.P. (MD) No.8494 of 2018

S.Pattu

.. Petitioner

Vs.

1) The Executive Magistrate
and Deputy Commissioner of Police,
Law and Order,
Madurai City,
Madurai.

2) The Inspector of Police,
Law and Order,
B-5, South Gate Police Station,
Madurai,
(Crime No.551 of 2018)

3) The Superintendant of Prison,
Madurai Central Prison,
Madurai.

.. Respondents

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records in C.M.C.No.62/ ந.செ.நகரா.து.ஆ/ ம.மா/2018 on the file of the respondent No.1 dated 19.09.2018 and set aside the same as illegal and consequently direct the respondents to release the petitioner's husband Saravana Kumar @ Sappani Saravanan, S/o Narayanan aged 46 years from Central Prison, Madurai.

For Petitioner : Mr.R.Venkatesan

For Respondent : Mr.A.Robinson, (CrI., side)
Government Advocate

O R D E R

Heard the learned counsel for the revision petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent Police.

<https://hcservices.ecourts.gov.in/hcservices/>

2. This revision petition is directed against the detention



order of the first respondent, who has passed the impugned order herein, committing the husband of the revision petitioner for prison for breach of bond executed under Section 110 Cr.P.C.

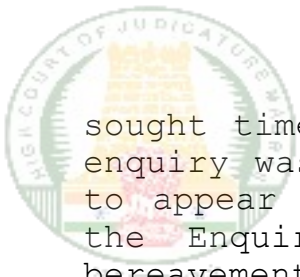
3. The learned counsel appearing for the revision petitioner would submit that Saravana Kumar @ Sappani Saravanan, husband of the petitioner herein was asked to execute a bond under Section 110 Cr.P.C by the first respondent herein on 2.02.2018 to maintain good conduct. Despite executing the bond, the said Saravana Kumar @ Sappani Saravanan has involved in the case of extortion on 14.08.2018 and a case has been registered against him by Jaihindpuram Police Station in Crime No.551 of 2018 on the complaint given by Abdulah, an employee of Jum Jum Noor Mohammed Sales and Service.

4. Based on the complaint, the accused Saravana Kumar @ Sappani Saravanan was arrested. The first respondent herein has issued notice to him seeking why action should not be taken against him for breach of bond. The said notice dated 10.09.2018 to appear on 12.09.2018 was served to the detenu through the prison authorities. On 12.09.2018, the detenu was present. Witnesses were examined on his request and for cross examination enquiry was adjourned to 17.09.2018. For the enquiry to be conducted on 17.09.2018, the second PT warrant was issued through the prison authorities on 12.09.2018 for appearance of the detenu on 17.09.2018.

5. Since this Court has granted interim bail to the detenu Saravana Kumar @ Sappani Saravanan, he did not appear before the first respondent on 17.09.2018. Thereafter on 19.09.2018, he was again summoned and in his presence, witnesses were examined. But the detenu has again involved in crime under Section 392, 397, 506(2) IPC. Therefore, the first respondent has committed him to undergo the remaining period of bond that is 4 months and 13 days for committing breach.

6. The learned counsel appearing for the revision petitioner would submit that in the case of Bala @ Balakrishnan vs., Administrative Executive Magistrate, Trichy City and others reported in 2016 Criminal Law Journal 4603, this Court has set aside the order passed by the Executive Magistrate committing the petitioner for imprisonment for breach of bond, without issuing notice to the petitioner and without recording grounds for coming to the conclusion. The learned counsel referring this judgment would submit that the Executive Magistrate by merely informing the petitioner and without mentioning the date of hearing or time limit before which the petitioner is expected to send his representation, cannot pass order of imprisonment for breach of bond.

7. In this case, factually the first respondent has issued PT <https://hcservices.ecourts.gov.in/hcservices/> warrant to the detenu thrice. In the first occasion when he appeared on 12.09.2018 in his presence, witnesses were examined and he has

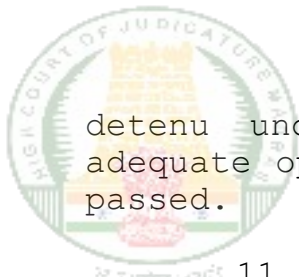


sought time to cross examine the witnesses and on his request, the enquiry was adjourned to 17.09.2018. When the 2nd PT warrant issued to appear on 17.09.2018, the detenu ought to have appeared before the Enquiry Officer but he did not appear. Since there was bereavement in his family, interim bail was granted and he had a good reason for not appearing for the enquiry on 17.09.2018. The first respondent has taken note of this fact and adjourned the enquiry to 19.09.2018. On 19.09.2018, the detenu had appeared and in his presence the witnesses were examined. Thereafter, after careful consideration of the evidence of the witnesses, the first respondent has invoked the bond. Therefore, the above judgment cited by the learned counsel has no relevance.

8. The learned counsel for the revision petitioner would rely upon another judgment of this Court reported in (2017) 3 MLJ (Cr1) 430 in the case of Selvam @ Selvaraj vs., Executive Magistrate cum Deputy Commissioner of Police, (Law and Order, Crime and Traffic), Tiruppur City and another. In this case, the learned Judge of this Court after considering the factual aspect of that case and the fundamental rights conferred to the individuals has observed that the impugned order of detention made by the Executive Magistrate in that case under Section 122 1(B) of Cr.P.C was an order without charge, without trial and without judgment and without following due process of law. This case arising under the bond executed under Section 117 and consequential order passed under Section 122 (1)(b) of Cr.P.C. In the case cited, this Court has found that before passing the impugned order of imprisonment for breach of bond, the detenu was not afforded opportunity to participate in the enquiry. His view was not taken before passing the impugned order. As pointed out earlier, in this case thrice opportunity was given to the detenu and he was afforded an opportunity to cross examine the witnesses.

9. The learned counsel submits that the detenu was not allowed to cross examine the witness during the enquiry. If really the first respondent was so prejudiced to deprive the detenu of his valuable right to cross examine, he would have not adjourned the case at the first instance itself when the accused appeared before him on 12.09.2018 and sought for time to cross examine the witnesses. Therefore, I do not find any merits in the said submission.

10. The learned counsel appearing for the revision petitioner would forcibly submit that the liberty of the individual is deprived by invoking Section 122(1)(b) of Cr.P.C. However, the learned Government Advocate (criminal side) would submit that this petitioner is a history-sheeter and has involved in six criminal cases registered at various police stations of Madurai city. That is the reason why the first respondent initially took a bond from the detenu with a hope that he will maintain good conduct. Having breached the bond and involved in crime, registered in Jahindpuram Police Station in Cr.No.551 of 2018 under Section 392, 397 & 506(2) IPC, the first respondent has though fit to proceed against the



detenu under Section 121 (1)(b) of Cr.P.C. Accordingly, after adequate opportunities given to the detenu, the impugned order was passed.

11. This Court finds force in the submission made by the learned Government Advocate. The points raised by the revision petitioner challenging the impugned order are not sustainable in view of the facts of this case. Accordingly, the Criminal Revision Petition is dismissed. Consequently, Crl.M.P.(MD) No.8494 of 2018 is closed.

12. If there is any change in circumstances and the detenu make representation for premature release on that ground, the first respondent shall be at liberty to consider the representation and pass appropriate order within 15 days from the date of receipt of the representation.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To:

- 1) The Executive Magistrate
and Deputy Commissioner of Police,
Law and Order,
Madurai City,
Madurai.
 - 2) The Inspector of Police,
Law and Order,
B-5, South Gate Police Station,
Madurai.
 - 3) The Superintendant of Prison,
Madurai Central Prison,
Madurai.
 - 4) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 1 CC TO Mr.R.Venkatesan , ADVOCATE IN SR No.92902.
 -
 - Sts
 - DS RP SAR4 08 11 2018 4P 6C

Order made in
Crl.R.C. (MD) No.558 of 2018
29.10.2018