

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2019

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.25142 of 2019
and W.M.P. Nos.24701 & 24702 of 2019

Kaidhi @ Gowtham

.... Petitioner

vs.

1. Revenue Divisional Officer/Executive Magistrate,
Erode,
2. Inspector of Police,
Karungalpalayam Police Station,
Erode District.
3. The Superintendent,
Central Prison,
Coimbatore.

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for records in M.C.No.350/2019/A2 dated 06th April 2019 on the file of the Revenue Divisional Officer, Erode and quash the same.

For Petitioner : Mr.Deepan Uday

For Respondents: Mr.M.Mohammed Riyaz,
Additional Public Prosecutor

ORDER

The impugned order passed by the 1st respondent in exercise of his powers under Section 122(1)(b) of Cr.P.C is the subject matter of challenge in this writ petition.

2. It is seen from the records that a case came to be registered by the 2nd respondent police against the petitioner under Section 110 of Cr.P.C to maintain peace and security in the locality. The 1st respondent initiated proceedings under Section 110 r/w 111 and 112 of Cr.P.C against the petitioner based on the above said FIR and by an order dated 29.03.2019. The 1st respondent directed the petitioner to execute a bond to maintain peace and security for a period of six months from 26.03.2019 to 24.09.2019. Accordingly the petitioner also executed a bond.

3. On 29.03.2019 a complaint was given by one Mrs.Sapna and based on the complaint an FIR was registered in Crime No.208 of 2019 for an offence under Section 302 of IPC and the petitioner was shown as an accused in this FIR. The petitioner was arrested and remanded to judicial custody on 04.04.2019 in the said case.

4. The 1st respondent took note of this fact and initiated proceedings under Section 122(1)(b) of Cr.P.C. on the ground that a serious offence has been committed within the bond period and proceeded to cancel the bond and directed the petitioner to be kept in judicial custody till the end of the bond period i.e., till 24.09.2019. Aggrieved by this order, the above writ petition has been filed.

5. The learned counsel for the petitioner submitted that the order has been passed by the 1st respondent without giving any opportunity to the petitioner and without following the procedure contemplated under Cr.P.C and on that ground itself the impugned order is liable to be set aside. The learned counsel in order to substantiate his submissions, brought to the notice of this Court, the latest judgment in P.Sathish @ Sathish Kumar vs. State reported in 2019 (2) MWN (Cr.) 136 wherein, this Court has given detailed guidelines while dealing with cancellation of bond while taking action under Section 122(1)(b) of Cr.P.C.

6. The learned Additional Public prosecutor appearing on behalf of the respondent police submitted that the petitioner indulged himself in committing a serious crime of murder during the bond period and he has violated the undertaking given in the bond and therefore, the 1st respondent was well within his jurisdiction to cancel the bond in exercise of his powers under Section 122(1)(b) of Cr.P.C. The learned Counsel further submitted that if this Court is of the opinion that the procedure has not been properly followed and that the guidelines issued by this Court has not been followed, the impugned order may be treated as a show cause notice and the petitioner shall be given an opportunity to put forth his contentions and thereafter, the 1st respondent can be directed to pass orders in accordance with law.

7. This Court has carefully considered the submission made on either side and also perused the materials placed on record.

8. The impugned order passed by the 1st respondent in the above writ petition has to fail primarily on the ground that the order was passed without affording any opportunity to the petitioner. There is a clear violation of principles of natural justice and the order impugned has to be interfered with on this ground alone. That apart this Court has given detailed guidelines in P.Sathish @ Sathish Kumar vs. State referred supra and those guidelines have not been followed by the 1st respondent and the procedure as contemplated under Cr.P.C. was also not followed by the 1st respondent before passing the impugned order.

9. It will be relevant to take note of the judgment cited by the learned counsel for the petitioner referred supra and the relevant portions are extracted hereunder:

14. In the conspectus of the above, this Court is of the considered view that the Suggestions/Guidelines as given by the learned Senior Advocate and others on one side and the learned Public Prosecutor on the other side have been considered by this Court and the following legal principles emerge on such consideration:

1. Notice to be sent to the person by the Executive Magistrate to show cause as to why action under Section 122(1)(b) of Cr.P.C. should not be taken for breach of the Bond executed under Section 117, Cr.P.C. on a date fixed.

2. At the Enquiry, the Executive Magistrate should furnish the person the materials sought to be relied upon, including statements of Witnesses, if any, in the vernacular (if the person is not knowing the language other than his mother tongue).

3. If the person wishes to engage an Advocate to represent him at the Enquiry, an opportunity to have a Counsel of his choice should be provided to him.

4. The Executive Magistrate shall inform the person about his right to have the assistance of a Lawyer for defending him in the Enquiry.

5. The Enquiry shall be conducted by the Executive Magistrate on the notified date or such other date as may be fixed and the person should be allowed to participate in the same.

6. At the Enquiry, an opportunity should be given to the person to:

- (i) cross-examine the official Witnesses, if any and
- (ii) produce documents and Witnesses, if any, in support of his case.

7. Such Executive Magistrate or his successor-in-office, should then, apply his mind on the materials available on record, in the Enquiry, and pass speaking Order.

8. An Order under Section 122 (1)(b) of Cr.P.C., should contain the grounds upon which the Executive Magistrate is satisfied that the person has breached the bond.

9. A copy of the Order should be furnished to the person along with the materials produced at the Enquiry.

10. The Enquiry, as far as possible shall be completed within 30 days and at no circumstance, the Enquiry shall be adjourned unnecessarily. The Advocates, who appear on behalf of the persons concerned, are expected to cooperate with the Enquiry process for its expeditious completion."

The above legal principles as evolved to be followed by all the Executive Magistrates concerned in future. In order to infuse uniform approach by all the Executive Magistrates concerned, the learned State Public Prosecutor is directed to circulate this decision to the Government and the Government shall act upon the principles as laid down above and issue necessary instructions to all the designated Executive Magistrates to follow the principles strictly while exercising their power under Section 122(1)(b) of Cr.P.C.

The above judgment will squarely apply to the facts of the present case.

11. In view of the above, the impugned order passed by the 1st respondent shall be construed as a show cause notice and the petitioner is directed to give his response within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the 1st respondent shall proceed further with the enquiry, strictly in accordance with the guidelines given by this Court in the decision referred supra and pass final orders within a period of four weeks thereafter. In view of this order, the petitioner is directed to be released from the Central Prison, Coimbatore.

12. In the result, the Writ Petition is allowed to the extent indicated above. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-

Assistant Registrar(CS IX)

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To

1. Revenue Divisional Officer/Executive Magistrate,
Erode,
2. Inspector of Police,
Karungalpalayam Police Station,
Erode District.
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to M/s.Deepan Uday , Advocate SR.No. 72611

W.P No.25142 of 2019

A.SK(27/08/2019)



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