

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Thirteenth day of February Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice R. MAHADEVAN

CRIMINAL MISCELLANEOUS PETITION No.1187 of 2020

IN CRL.RC.NO.26 OF 2020

SANTHOSH @ SANTHOSH KUMAR

[PETITIONER]

Vs

1 STATE REP. BY

[RESPONDENTS]

THE INSPECTOR OF POLICE,
THIRUMANUR POLICE STATION,
ARIYALUR DISTRICT.

2 THE REVENUE DIVISIONAL OFFICER/
SUB DIVISION MAGISTRATE,
ARIYALUR,
ARIYALUR DISTRICT.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.RC.NO.26 OF 2020 on the file of the High Court, the High Court will be pleased to suspend the sentence of 108 days Simple Imprisonment imposed by the learned Revenue Divisional Officer/Sub Division Magistrate, Ariyalur order dated 20.11.2019 made in proceedings in Na.Ka.A3/2766/2019, pending disposal of the above CRL.RC.NO.26 OF 2020 [IN CRL.MP.NO.1187 OF 2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.RC.NO.26 OF 2020 on the file of the High Court and upon hearing the arguments of M/S.R.GOKULAKRISHNAN, Advocate for the petitioner and of MR.K.PRABAKAR, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

Seeking to set-aside the order dated 20.11.2019 passed by the learned Revenue Divisional Officer / Sub-Division Magistrate, Ariyalur, whereby the learned Judge has cancelled the bond executed by the petitioner under Section 110 Cr.P.C, and directed the petitioner to undergo Simple Imprisonment for 108 days, the Criminal Revision Case has been filed by the petitioner. Seeking to suspend the sentence of incarceration of 108 days, this Criminal Miscellaneous Petition has been filed by the petitioner.

2. Earlier the respondent has registered a First Information Report in Crime No.169 of 2019 for the alleged offence under Sections 147, 148, 294 (b), 323, 324, 506 (ii) IPC read with Sections 348 and 120 (B) IPC. The petitioner executed a bond under Section 110 of the Cr.P.C. on 05.03.2019 for a period of one year with two sureties. By following the procedures contemplated under Sections 122 (1) and 122 (7) of the Cr.P.C, the respondent prayed the learned Executive Magistrate to cancel the bond executed by the petitioner. Without providing any opportunity to the petitioner, the court below has cancelled the bond executed by the petitioner on 20.11.2019 under Section 110 of the Cr.P.C. and directed the petitioner to undergo Simple Imprisonment till 05.03.2020. Seeking to suspend such imprisonment, this Criminal Miscellaneous Petition has been filed by the petitioner.

3. In the interregnum, the respondent filed another case against the petitioner and the petitioner moved Bail Petition before the learned Principal Sessions Judge, Ariyalur, in CrI.M.P.No.3071 of 2019 and the same was granted on 02.12.2019.

4. The learned counsel for the petitioner submitted that out of 108 days incarceration ordered, the petitioner has already suffered 90 days; that the Court below has not followed the procedures contemplated under Section 122 of the Cr.P.C; that without giving notice or enquiry to the petitioner herein, the order has been passed, on 20.11.2019, which does not stand in the eye of law. He also relied upon the order of this Court in the case of **Vadivel @ Mettai Vadivel v. The State, Rep. By the Inspector of Police (CrI.R.C.Nos.982 of 2018 batch case)**, wherein it has been held as follows:-

"30. This Court is of the considered view that the arguments advanced on behalf of the State that no notice need be given is quite audacious submission, forgetting for a moment that by action initiated under Section 122 Cr.P.C., a citizen of this Country can be arrested and detained until expiry of the bond period and in such event befalling any offender/suspect, he or she is not entitled to any notice to him/her. Such legal scenario cannot be allowed to exist in a constitutional State. Any State governed by the Constitution which provides a separate chapter enumerating the fundamental rights of the citizens, and such rights under no circumstances, can be infringed except under due process of law. A liberty of a citizen cannot be jeopardized at the free will of the Executive Magistrate concerned. Only when an opportunity is given to the offenders/suspects, which is the core principle of natural justice which was evolved over the years by the Constitutional Courts, namely, "audi alteram partem (no one shall be condemned unheard)", procedural fairness is best served.

31. The theory of useless formality advocated by the learned Government Advocate appearing for the State may appear to be attractive in a first blush, but if such submission is to be accepted, it will only do grave violence to the established principles of natural justice and besmirch the decision making process of the statutory authority as against its citizens. Affording opportunity before any adverse order is passed is the hallmark of principle of natural justice and such principle is embodied and enshrined under Article 21 of the Constitution of India. Therefore, this Court is of the view that the offenders/suspects are entitled to notice and enquiry before a final decision is taken by the Executive Magistrate under Section 122(1) (b) Cr.P.C."

5. The learned Additional Public Prosecutor for the respondents was heard on the submissions made by the learned counsel for the petitioner.

6. A perusal of the order dated 20.11.2019 passed by the Court below would reveal that no opportunity of being heard or enquiry was provided to the petitioner. Also, the order impugned is silent about the intimation to the petitioner's relatives with regard to the impugned order, as contemplated under the Code of Criminal Procedure. The decision, referred to supra, relied upon by the learned counsel for the petitioner also squarely applies to the facts of the case on hand.

7. Thus considering the facts and circumstances of the case and taking into account the submissions made by the learned counsel on either side, this Court is of the view that the petitioner herein can be granted the relief of interim suspension of sentence. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner herein is directed to be enlarged on bail on the following conditions:-

- a) The Petitioner/Accused is directed to execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Ariyalur;
- b) The Petitioner/Accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities; and

c) The Petitioner/ Accused shall appear before the first respondent / Police, everyday at 10.30 am, pending disposal of the Criminal Revision Case.

8. List the Criminal Revision Case on 06.03.2020.

-sd/-
13/02/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE NO.II,
ARIYALUR.

4 THE CHIEF JUDICIAL MAGISTRATE
ARIYALUR [FOR INFORMATION]

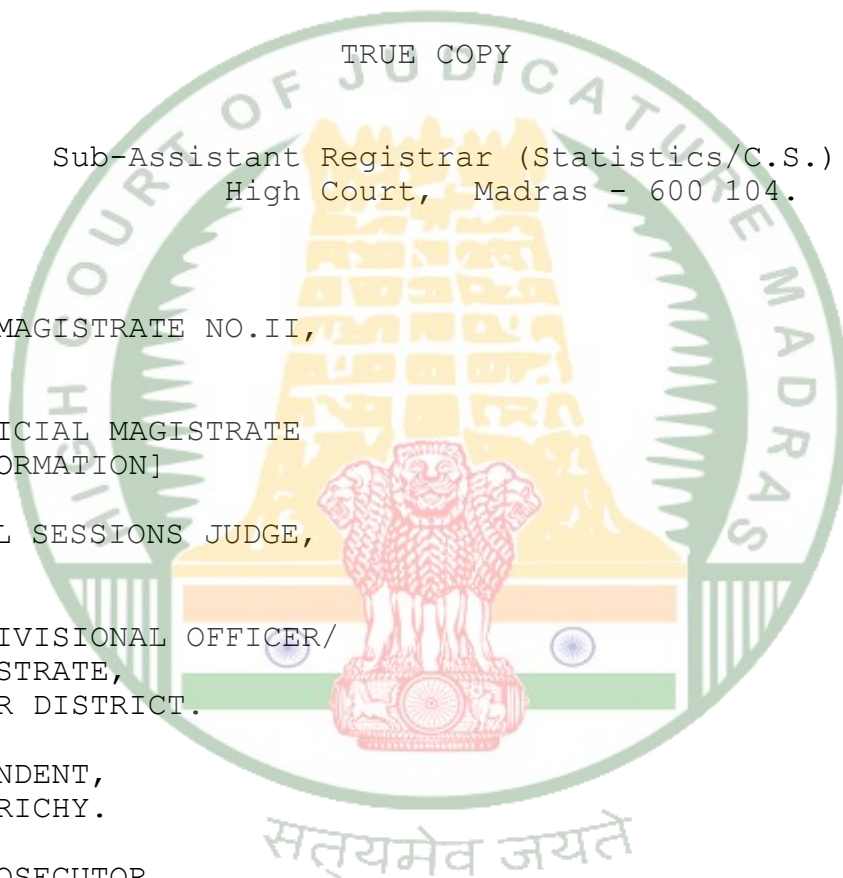
3 THE PRINCIPAL SESSIONS JUDGE,
ARIYALUR.

4 THE REVENUE DIVISIONAL OFFICER/
SUB-DIVISION MAGISTRATE,
ARIYALUR, ARIYALUR DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

7 THE INSPECTOR OF POLICE,
THIRUMANUR POLICE STATION,
ARIYALUR DISTRICT.



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+1C.C. to M/S.R.GOKULAKRISHNAN Advocate on payment of necessary charges SR NO.2963

Order

in
CRL.MP.1187/2020
in
CRL.RC.26/2020

Date :13/02/2020

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

MK:14/02/2020



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