

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.6100 of 2020 in

Crl.R.C.No.868 of 2020

Ramesh

... Petitioner

Vs.

1.The Executive Magistrate/
Deputy Commissioner of Police,
Washermenpet District,
Chennai.

2.The State by Inspector of Police (L & O),
H.4 Korukkupet Police Station,
Chennai.

... Respondents

PRAYER: Criminal Miscellaneous Petition filed under Sections 397(1) of the Code of Criminal Procedure, to stay the operation of the impugned order dated 23.09.2020 made by the 1st respondent in M.P.No.4 of 2020 in C.No.279/Sec.Pro/DCP WPT/2020 and thereby release the petitioner from detention pending disposal of the above revision petition.

For Petitioner : Mr.V.Jeevagiridharan

For Respondents : Mr.C.Raghavan,
Government Advocate [Crl. Side]

ORDER

This Criminal Miscellaneous Petition has been filed to stay the operation of the impugned order dated 23.09.2020 made by the 1st respondent in M.P.No.4 of 2020 in C.No.279/Sec.Pro/DCP WPT/2020 and release the petitioner from detention pending disposal of the above revision petition.

2.The petitioner has been detained for violation of bond under Section Section 107 Cr.P.C., for which the 1st respondent passed a detention order under Section 122(1)(b) Cr.P.C., in M.P.No.4 of 2020 in C.No.279/Sec.Pro/DCP WPT/2020 in H4, Korukkupet PS SL.No.16/2020, dated 23.09.2020.

3.The learned counsel for the petitioner submitted that the petitioner executed a bond under Section 107 Cr.P.C on 03.08.2020. Thereafter, the show cause notice was issued on 22.09.2020, in which the signature of the officer is on the same day, which is at page No.2 of the typed set and the bond was cancelled on 22.09.2020 and the 1st respondent passed an order under Section 122(1)(b) of Cr.P.C., against the petitioner for violation of Section 107 Cr.P.C., and detained the petitioner on 23.09.2020 and the signature of the officer is found in page No.9 of the typed set. The learned counsel for the petitioner further submitted that all these documents are not contemporary documents, which were prepared only to detain the petitioner and to circumvent the law. The learned counsel for the petitioner further submitted that in paragraph No.7 of the impugned order dated 23.09.2020, it has been mentioned that the petitioner was produced on PT warrant on 22.09.2020 and copies were furnished him and for further hearing, he was directed to be appeared on 23.09.2020. The contention of the petitioner is that this recording would show that the entire proceedings is only a stage mannered, since the admitted case of the respondents that the show cause notice itself has been issued on 23.09.2020, no such a case, how PT warrant could be issued on 22.09.2020.

4.Further, in Section 267(2) Cr.P.C., it is stated that if an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate, to whom such Magistrate is subordinate. Thereafter, the prison authorities can act upon. Now, it has become routine that the Executive Magistrate-cum-Deputy Commissioner of Police are forwarding and issuing PT warrant under Section 267 Cr.P.C., which has not countersigned by the learned Chief Judicial Magistrate.

5.Further, the 1st respondent cannot now say that the mentioning of date i.e., 22.09.2020 in paragraph No.7 of the impugned order is typographical error. The 1st respondent had clarified in paragraph No.10 that on 22.09.2020, the petitioner was present, documents were furnished and he was given opportunity to make his submissions and on the next day i.e., on 23.09.2020, the impugned order came to be passed.

6.The 1st respondent had merely acted on the report of the 2nd respondent, without verifying its truthfulness or otherwise. The 1st respondent, merely, acted as post office in accepting the report of the 2nd respondent and mechanically passed an order, thereby detaining the petitioner. The detention of the petitioner cannot be done as a matter of routine, since it affects the fundamental right of the petitioner.

7.He further submitted that this Court in the case of "**Devi Versus The Executive Magistrate-cum-Deputy Commissioner of Police, St.Thomas Mount District**" in CrI.R.C.No.78 of 2020, by order dated 25.09.2020, given a finding that whether by G.O.Ms.No.659, Home (Cts. VIA) Department dated 12.09.2013 and G.O.Ms.No.181, Home

(Cts.VIA) Department dated 20.02.2014, the Deputy Commissioner of Police are given power to act as Executive Magistrate and requested the Registry to constitute a bench for authoritative pronouncements. Thus the power of the 1st respondent is now questionable.

8.The learned Government Advocate [Crl. Side] submitted that as per Section 122(1)(b) of Cr.P.C., the order was passed by the 1st respondent. He further submitted that as per Section 122(3) Cr.P.C., the 1st respondent after examining such proceedings that is the report received from the 2nd respondent and on further information or evidence if he thinks necessary and after giving concerned person a reasonable opportunity of being heard and thereafter, only the order has to be passed. He further submitted that in this case, all procedures were followed. Added to it, from the records, it is seen a show cause notice issued to the petitioner under Section 111 Cr.P.C. Therefore, the other points raised by the petitioner are to be decided in the revision. The petitioner being a notorious person, involved himself in other cases and he is a habitual offender.

9.This Court considered the submissions made on either side and perused the materials available on record.

10.This Court in "**Devi Versus The Executive Magistrate-cum-Deputy Commissioner of Police, St.Thomas Mount District**" in Crl.R.C.No.78 of 2020, by order dated 25.09.2020, had deferred with the findings given in Crl.R.C.No.982 of 2018, dated 24.11.2018 and held in paragraph No.20 as follows:-

"42 Since this Court respectfully differs from V. Parthiban, J. on the issue of applicability of Section 122(1)(b) Cr.P.C. to a good behaviour bond under Section 110(e), the Registry is directed to place this matter before the Hon'ble Chief Justice for appropriate orders.

*43 Further, as this Court is not in agreement with the view propounded by another learned single judge of this Court in **Balamurugan** (supra), the following question is framed with a direction to the Registry to place the same before the Hon'ble Chief Justice with a request to constitute a Bench of appropriate strength for an authoritative pronouncement:*

Whether G.O.Ms.No.659, Home (Cts. VIA) Department dated 12.09.2013 and G.O. Ms.No.181, Home (Cts.VIA) Department dated 20.02.2014 violate the scheme of separation of powers and are ultra vires the proviso to Section 6 of the Tamil Nadu District Police Act, 1868 (Central Act XXIV of 1868)?"

11.Now, both the learned Single Judges have referred the issues to be placed before the Hon'ble The Chief Justice for constituting a

larger bench with regard to applicability of Section 122(1)(b) Cr.P.C., the power exercised by police officers can it be said to be power exercised as Executive Magistrate under the Code of Criminal Procedure and for other connected issues.

12. In view of the above and it is learnt that it would take some time for the above issues to be decided, this Court is inclined to suspend the sentence imposed on the petitioner with the following conditions:-

- (*) The petitioner shall execute own bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) before the Superintendent, Central Prison, Puzhal, Chennai.
- (*) The petitioner shall appear before the 2nd respondent Police every Monday i.e., from 09.11.2020 at 10.00 a.m., until further orders.
- (*) 13. Hence, the Criminal Miscellaneous Petition is ordered to the extent of granting Suspension of Sentence. The Superintendent, Central Prison, Puzhal, Chennai is directed to set at liberty the petitioner, if his further detention is no longer required in connection with any other case or proceedings."

-sd/-
14/10/2020

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.

(*) Being mentioned as per order of this Court dated 29/10/2020. Made in CrI.M.P.No.6100/2020 CrI.R.C.No.868/2020.

TO

1 THE EXECUTIVE MAGISTRATE/
DEPUTY COMMISSIONER OF POLICE,
WASHERMENPET, CHENNAI DISTRICT.

2 THE INSPECTOR OF POLICE (L AND O),
H-4 KORUKKUPET POLICE STATION,
CHENNAI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE OFFICER INCHARGE
SUB JAIL, TIRUTTANI.

5 (*) THE SUPERINTENDENT
CENTRAL PRISON, PUZHAI, CHENNAI.

+1 C.C. to M/S.V.JEEVAGIRIDHARAN Advocate on payment of
necessary charges SR.NO.7073

Order

in
CRL MP.6100/2020

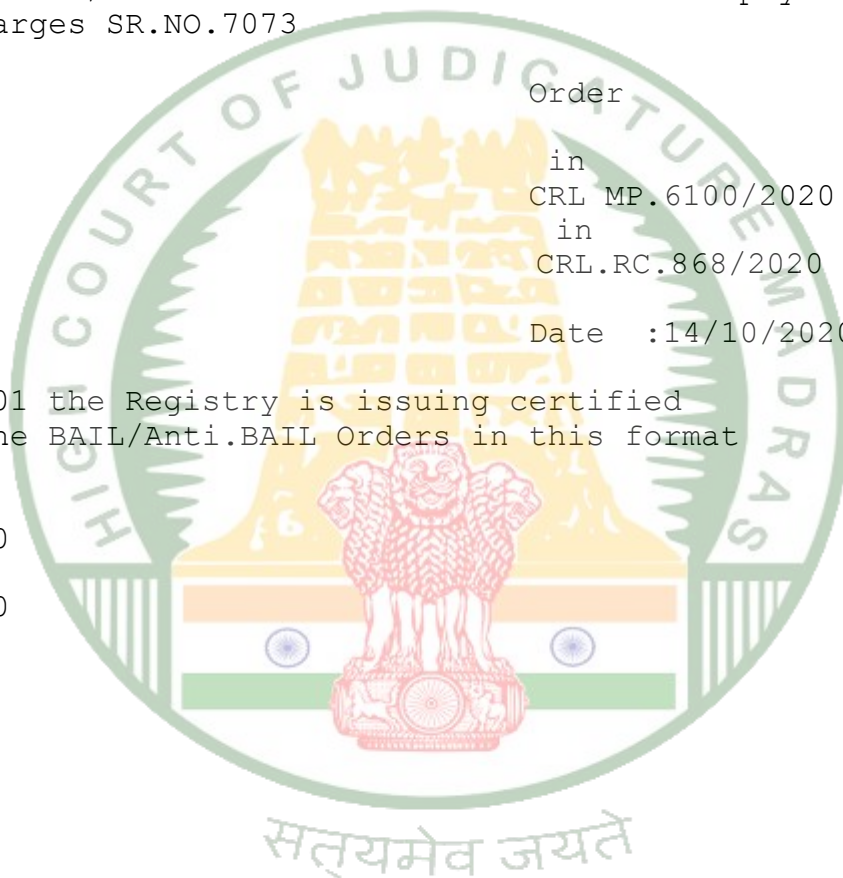
in
CRL.RC.868/2020

Date :14/10/2020

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TA-02/11/2020



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