

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.M.P.No.8349 of 2020

in CrI.R.C.No.1197 of 2020

Kamesh

... Petitioner

Vs.

1.The Executive Magistrate and
Deputy Commissioner of Police,
Madhavaram Range,
Chennai City Police.

2.The State rep. By
The Inspector of Police (Law and Order),
M-5, Ennore Police Station,
Chennai-57.

... Respondents

PRAYER: Criminal Miscellaneous Petition filed under Sections 397(1) of the Code of Criminal Procedure, to suspend the sentence and enlarge the petitioner on bail in M.P.No.11 of 2020 in R.C.No.162/Sec.Pro/DCPMVM/2020 dated 16.09.2020 on the file of the Executive Magistrate cum Deputy Commissioner of Police pending disposal of the revision petition.

For Petitioner : Mr.M.Kaveriselvam

For Respondents : Mr.C.Iyyappa Raj
Additional Government Pleader

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence and enlarge the petitioner on bail in M.P.No.11 of 2020 in R.C.No.162/Sec.Pro/DCPMVM/2020 dated 16.09.2020 on the file of the Executive Magistrate cum Deputy Commissioner of Police pending disposal of the revision petition.

2. The petitioner has been detained for violation of bond under 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.11 of 2020 in R.C.No.162/Sec.Pro/DCPMVM/2020 dated 16.09.2020.

3. The learned counsel for the petitioner submitted that the petitioner executed a bond under Section 107 Cr.P.C on 24.02.2020.

Thereafter, the petitioner violated the bond and committed offence under Sections 147, 148, 341, 294(b), 307 & 506 IPC on 27.08.2020, for which a case came to be registered in Crime No.3197 of 2020 and he was arrested on the same day. Therefore, the PT warrant was issued on 16.09.2020 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 16.09.2020. The learned counsel for the petitioner further submitted the petitioner was denied any legal aid. The learned counsel submitted that the Hon'ble Supreme Court had held that the Magistrate to give a legal assistance and also inform the concern about the reason of the proceedings and the rights available to him. In this Case, no such exercise have been done. Further, 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.

4. 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.

5. The learned Additional Public Prosecutor 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.

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

7. This Court in "**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, had deferred with the findings given in CrI.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, 1751 (Central Act XXIV of 1751)?"

8. 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.

9. 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 Central Prison-I, Puzhal, Chennai.
- The petitioner shall appear before the 2nd respondent Police every Monday i.e., from 28.12.2020 at 10.00 a.m., until further orders.

10. Hence, the Criminal Miscellaneous Petition is ordered. The Superintendent Central Prison-I, 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/-
22/12/2020

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, THIRUVOTRIYUR

2 THE EXECUTIVE MAGISTRATE CUM
DEPUTY COMMISSIONER OF POLICE,
MADHAVARAM RANGE, CHENNAI CITY POLICE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON-I, PUZHAL, CHENNAI

5 THE INSPECTOR OF POLICE LAW AND ORDER,
M-5, ENNORE POLICE STATION, CHENNAI-57.

C.C. to M/S.M.KAVERISELVAM Advocate on payment of necessary charges

सत्यमेव जयते Order

in
CRL MP.8349/2020

in
CRL.RC.1197/2020

Date :22/12/2020

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GKS:29/12/2020