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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 07.09.2020

Delivered On : 15.09.2020

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

Crl. R.C.(MD)No.260 of 2020

Mohamed Ribas .. Petitioner

Vs.

1.The Second Class Executive Magistrate and Tahsildar,
Keelakarai Taluk,
Keelakarai,
Ramanathapuram District.

2.The Inspector of Police,
Keelakarai Police Station,
Ramanathapuram District.

3.The Superintendent of Prison,
Central Prison,
Pulal – 2,
Chennai. .. Respondents

**Prayer** : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records pertaining to the impunged order in M.C.No.46 of 2019(A4) dated 14.01.2020 passed by the respondent No.1 and to set aside the same as illegal.

For Petitioner : Mr.S.M.A.Jinnah
For Respondents : Mr.K.Chellapandian,
Additional Advocate General,
assisted by Mr.K.Dinesh Babu
Additional Public Prosecutor

**ORDER**

This petition has been filed to set aside the proceedings passed in M.C.No.46 of 2019 (A4) dated 14.01.2020, on the file of the first respondent.

2.The case against the petitioner is that since the petitioner involved in so many cases, based on the report of the Keelakarai Police on 20.11.2019, the Tahsildar, Keelakarai in M.C.No.46 of 2019 obtained a bond from the petitioner under Section 110 of Cr.P.C., to maintain good behavior for a period of

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two years. Subsequently, on 29.11.2019, on the complaint given by Ramesh, Village Administrative Officer, a case in Crime No.188 of 2019 under Section 14 of Foreigners Act r/w. Sections 3(a), 6(a) Entry into India Rules, Section 6(a) of Indian Passport Act, Section 2(1)(b)(i) of the Citizenship Act and Sections 468 and 471 of IPC was registered against the petitioner. On the requisition of the second respondent, the first respondent passed the impugned order under Section 122(1)(b) of Cr.P.C., directing the petitioner to be in custody till 19.11.2021. Against that order, the petitioner preferred this revision petition.

3.On the side of the petitioner, it is stated that no show cause notice was issued to the petitioner and no enquiry was conducted. The respondents did not furnish any copies of the documents and no opportunity was given to the petitioner. Without recording his satisfaction, the first respondent has passed an order. The guidelines of this Court in the case of ***P.Sathish @ Sathish Kumar @ State*** reported in ***2019(2) MWN Criminal 136***, were not followed by the first respondent.

4.The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of ***Ashik Mohammed @ Mohammed Ashik v. The Executive Magistrate/The Revenue Divisional Officer and others in Crl.R.C.(MD)No.128 of 2019***, wherein it is stated as follows:

> *"7.At this juncture, it is pertinent to mention the decision reported in 2016(2)TLNJ 228 (Criminal) (Bala @ Balakrishnan and Administrative Executive Magistrate, Trichy City and Others), wherein it has been held as follows:*
>
> > *As per Section 122(1)(b) of Cr.P.C., the Executive Magistrate before ordering a person to be jailed, he shall be satisfied that the person has breached the bond conditions, the Executive Magistrate must also record the grounds for such proof. That means, he must apply his mind and pass orders. He cannot pass order mechanically.*
> >
> > *But he need not write an elaborate Judgment like us. His orders must show atleast briefly the grounds upon which, he has satisfied that the person has breached the bond executed by him. Under Section 122(1)(b) of Cr.P.C., if the said satisfaction is not recorded, it will be presumed that the detention authority sending a person to jail is arbitrary, mechanical, not fair, unjust. The detention order must disclose the grounds of proof, otherwise, the Court cannot see what has transpired in the mind of*

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*the Executive Magistrate in passing the detention order, more particularly, when these orders are revisable by the Sessions Judge."*

5.The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of ***Sella v. State represented by, Executive Magistrate, and another*** reported in ***(2020) 1 MLJ (Crl.) 450***, wherein it is stated as follows:

*"Further, order discloses that no sufficient opportunity has been given to petitioner as per guidelines of this Court in various judgments – impugned order passed in violation of procedures as contemplated under Chapter VIII of Code 1973, hence, set aside"*

6.On the side of the petitioner, it is stated that the petitioner is residing in India for the past 10 years and he married an Indian lady and and they have three children. The family card and identity card were issued to him. The case of the year 2006 is a false case. The bond under Section 110 of Cr.P.C., was forcible obtained from the petitioner. The petitioner objected the same and send objections to the Collector regarding the same. No opportunity for the petitioner is given to the petitioner to explain that his wife is an Indian, having the family card. The petitioner was produced before the first respondent and the impugned order was passed on the same date. No enquiry was conducted. The copies of the statement of witness were not furnished to the petitioner. The petitioner was not given an opportunity to engage a counsel. The impugned order is not a speaking order. The satisfaction of the first respondent was not recorded. The petitioner's right to liberty is curtailed by the impugned order. Though the impugned order is passed on 14.01.2020 and the petitioner is in custody for the past eight months. The petitioner has to take care of his wife and children and prayed the impugned order to be set aside.

7.On the side of the respondents, it is stated that the petitioner frequently involved in Criminal offences and the second respondent referred the matter to the first respondent. The first respondent in M.C.No.46 of 2019 dated 20.11.2019 obtained a bond under Section 110 of Cr.P.C., from the petitioner for maintaining good behavior for a period of two years. Subsequently, a case in Crime No.188 of 2019 was registered against the petitioner under Section 14 of Foreigners Act r/w. Sections 3(a), 6(a) Entry into India Rules, Section 6(a) of Indian Passport Act, Section 2(1)(b)(i) of the Citizenship Act and Sections 468 and 471 of IPC. The petitioner was remanded to judicial custody on 21.11.2019. The case against the petitioner is that suppressing his nationality, the petitioner has obtained smart card and enjoying all the

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benefits from the Government. Since the petitioner violated the bond executed by the first respondent and based on the report filed by the second respondent, the first respondent initiated proceedings under Section 122(1)(b) of Cr.P.C., and passed the impugned order.

8.On the side of the respondents, it is stated that after detailed enquiry and after giving sufficient time to the petitioner by following the procedures laid down in law, the impugned order was passed by the first respondent. The revision petitioner is a habitual offender, having three previous cases and he was already detained under the National Security Act in Cr.M.P.No.1/NSA/2018 dated 12.04.2018. The previous antecedent of the petitioner is listed as below :

| Sl. No. | Name of the Police Station | Crime Nos and Sections |
|---|---|---|
| 1. | Keelakarai | Crime No.39 of 2014<br>Under Section 8(c) r/w. 21(c) NDPS Act, 1985 |
| 2. | Keenikarai | Crime No.449 of 2019<br>Under Section 294(b), 147, 506(i) of IPC |
| 3. | NIA | Crime No.1 of 2019<br>Under Section 153(A), 120(B) IPC r/w 15(c), 17, 18, 19, 20 of Unlawful Activities (Prevention) Act 1967 r/w 25(i)(a) Arms Act 1959 |

9.On the side of the respondents, it is stated that the petitioner is a citizen of Srilanka. His native place is Avvul Kaviya Road, Colombo, Srilanka. He had developed friendship with Seik Dawood, Devipattinam. They created a whatsapp group named as 'Shahadat is our Goal' (meaning “death is our goal”). He acted against public peace and religious harmony. His activities are detrimental to the National security and the sovereignty of India. All the facts and circumstances for passing the order was clearly explained in the impugned order.

10.On the side of the respondents, it is stated that the bond under Section 110 of Cr.P.C., was not at all challenged by the petitioner and the proceedings under Section 110 of Cr.P.C., is valid. Without questioning the proceedings under Section 110 of Cr.P.C., the petitioner cannot question the proceedings under Section 122(1)(b) of Cr.P.C. The petitioner is stated to be residing in India for the past 7 years but he has not informed the same to the authorities. He is not having passport or visa to

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enter into or to stay in India. The satisfaction of the first respondent is sufficient under Section 122(1)(b) of Cr.P.C.

11.On the side of the petitioner, it is stated that the order copy for proceedings under Section 110 of Cr.P.C., was not furnished to the petitioner. Without giving an opportunity for the petitioner, the bond was forcibly obtained from the petitioner. The petitioner has send his objections to the Collector. The personal liberty of the petitioner is affected by the impugned order.

12.On the side of the respondents, it is stated that the petitioner's entrance into India itself is an offence. If the copy of the proceedings under Section 110 of Cr.P.C., was not given to the petitioner, he can obtain the same through other means and can question the same.

13.It is seen that on 01.03.2014, Keelakarai Police Station registered a case against the petitioner and others in Crime No.39 of 2019 under Section 8(c) r/w. 21(c) of NDPS Act, 1985. He was sentenced to undergo two years and six months imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only). It is stated that on 01.04.2018, the petitioner and others formed a whatsapp group named 'Shahadat is our Goal' ('Death is our goal') and spreading whatsapp messages to form a muslim nation and to murder those, who are against that aim and that they distributed such pamphlets. A case in Crime No.46 of 2018 under Section 153(A), 120 (B) of IPC r/w. 15(c), 17, 18, 19, 20 of Unlawful Activities (Prevention) Act r/w. 25(I)(a) Arms Act was registered against the petitioner. It is stated that the petitioner was remanded under the National Security Act and later he was released on bail. A case filed by National Investigation Agency is pending against the petitioner. The petitioner indulged in criminal activities and Crime No.449 of 2019 under Section 147, 294(b), 506(i) of IPC was registered by the Keenikarai Police Station. It is stated that without informing that he is a foreigner, the petitioner has misguided this Court and obtained an order in Crl.O.P.(MD)No.17726 of 2019 dated 26.11.2019. A perusal of the order in Crl.O.P.(MD) No.17726 of 2019 dated 26.11.2019, reveals that the petition filed by the revision petitioner was dismissed by this Court.

14.Personal liberty is guaranteed to the citizens of India under the Constitution of India. The petitioner is not a citizen of India. The allegation against the petitioner is serious in nature. The allegation against the petitioner is that he entered India without following proper procedures and unauthorizingly he was staying in India and that without disclosing his nationality, he obtained identity card, voter card and Aadhar card. Another allegation against the petitioner is that he created a whatsapp

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group, which is a challenge to the integrity and sovereignty of the Nation.

15.Usually this Court insist upon the Executive Magistrate to follow the procedures prescribed by this Court. There is some discrepancies in the procedures followed by the first respondent. But it is seen that the first respondent perused the documents regarding the antecedent of the petitioner. Only after perusal of the documents, the impugned order was passed by the first respondent. National Security and sovereignty of our nation is far more important than anything else.

16.Considering the nature of the offence against the petitioner and considering the extra ordinary circumstances, this Court declined to set aside the impugned order. Hence, this Criminal Revision Case is dismissed and the order in M.C.No.46 of 2019 (A4) dated 14.01.2020 passed by the first respondent is confirmed. Consequently, miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

Mrn

**NOTE:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Second Class Executive Magistrate and Tahsildar,
Keelakarai Taluk,
Keelakarai,
Ramanathapuram District.

2.The Inspector of Police,
Keelakarai Police Station,
Ramanathapuram District.

3.The Superintendent of Prison,
Central Prison,
Puzhal - 2, Chennai.

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4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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