



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Fourteenth day of October Two Thousand Twenty

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.4758 of 2020
IN
CRL RC(MD) No.538 of 2020

ARAVIND KUMAR

... PETITIONER/ PETITIONER

Vs

1 EXECUTIVE MAGISTRATE CUM
DEPUTY COMMISSIONER OF POLICE,
LAW AND ORDER, MADURAI CITY,
MADURAI.

2 THE INSPECTOR OF POLICE
E3 ANNA NAGAR (L AND O) POLICE STATION,
MADURAI CITY, MADURAI.

... RESPONDENTS/ RESPONDENTS

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence and enlarge the petitioner on bail imposed by the judgment passed by the 1st Respondent in M.C.819/Ni/Se/Na & Ka.Thu.Aa/Ma.Maa/2020, dated 28.08.2020 pending disposal of the above Criminal Revision petition.

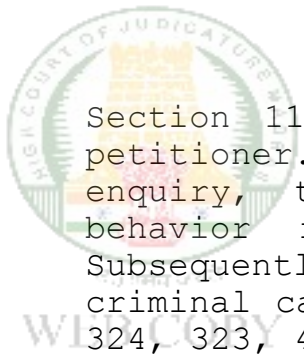
PRAYER IN CRL RC(MD) No.538 of 2020:

To call for the records relating the impugned proceedings passed by the 1st respondent in M.C.819/Ni/Se/Na & Ka.Thu.Aa/Ma.Maa/2020, dated 28.08.2020 and set aside the same as illegal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.M.JERIN MATHEW, Advocate for the petitioner and of Mrs.S.BHARATHI, Government Advocate on behalf of the Respondents, While admitting the CRL RC., the court made the following order:-

This petition has been filed to suspend the sentence and enlarge the petitioner on bail by the judgment passed by the first respondent in M.C.No.819/Ni.Se.Na.&Ka.Thu.Aa/Ma.Maa/2020, dated 28.08.2020, pending the disposal of the Criminal Revision.

2. The second respondent initiated proceedings and filed a report before the first respondent in Report No.106 of 2020, under <https://hservices.ecourt.gov.in/hservices/>



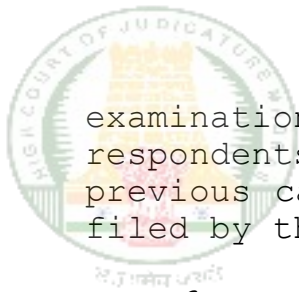
Section 110 and 117 r/w.113 Cr.P.C., on 21.07.2020, against the petitioner. The first respondent summoned the petitioner and after enquiry, the petitioner executed a bond for maintaining good behavior for a period of one year in M.C.No.819 of 2020. Subsequently, on 11.08.2020, the petitioner involved in another criminal case in Crime No.1485 of 2020, under Sections 294(b), 341, 324, 323, 427, 452, 506(ii) IPC r/w. Sections 3(1)(r), 3(1)(s), 3(2) SC/ST Act. Based on the report of the second respondent, the first respondent initiated proceedings and passed the impugned order. Against the impugned order, the petitioner preferred this revision. Along with the revision, he has filed the present application for suspension of sentence pending disposal of the said revision.

3. On the side of the petitioner, it is stated that the Deputy Commissioner has no jurisdiction to pass the impugned order and the procedures were not followed properly by the respondents. The proceedings under Section 122 (1)(b) Cr.P.C. cannot be initiated against a bond for maintaining good behaviour. The petitioner was not given sufficient opportunity to engage a legal aid counsel for contesting the enquiry and prayed the petition to be allowed.

4. The learned counsel for the petitioner relied on the Judgment of this Court reported in Crl.R.C.No.78 of 2020 [Devi Vs. The Executive Magistrate cum Deputy Commissioner of Police, Law and Order and another], dated 25.09.2020. The learned counsel for the petitioner also relied on a Judgment of this Court reported in Criminal Revision Case Nos.982, 991, 1164, 1295, 1322, 1241 of 2018 etc. batch, [Vadivel @ Mettai Vadivel Vs. The State, rep. by the Inspector of Police], dated 24.11.2018. Another judgments of this Court in Crl.R.C.(MD)No.394 of 2014 [Karthigayan @ Pallukarthik Vs. The Sub Divisional Magistrate cum Revenue Divisional Officer, Thanjavur], dated 05.02.2015 and Crl.R.C.Nos.1791, 1792 of 2002 etc., batch case [Malar @ Malarkodi and others Vs. The Sub Divisional Magistrate cum Revenue Divisional Officer], dated 31.10.2002 are also cited.

5. On the side of the respondents, it is stated that already sufficient opportunity was given to the petitioner. Documents are all furnished to the petitioner. All the procedures were scrupulously followed by the first respondent. The petitioner was given opportunity to cross-examine the witnesses. The petitioner was present on 19.08.2020 and 5 witnesses were examined on that date and that the petitioner cross-examined three witnesses by himself and prayed time for cross-examination of other two witnesses. On the request of the petitioner, the matter was adjourned to 21.08.2020. On 21.08.2020, again, the petitioner seeks time and hence, the matter was adjourned to 27.08.2020. Though the petitioner was on bail from 26.08.2020, the petitioner was present before the first respondent on 27.08.2020. Again, the petitioner requested time and hence, the matter was adjourned to 28.08.2020 and

<https://hccr.ceris.gov.in/ceris>



examination regarding P.W.1 on that date. On the side of the respondents, it is further stated that the petitioner is having previous cases and a list of five cases were annexed to the counter filed by the respondents and prayed the petition to be dismissed.

6. Heard the learned counsel on either side and perused the materials available on record.

7. In the judgment of this Court passed by the Hon'ble Mr.Justice V.Parthiban, in Criminal Revision Case Nos.982, 991, 1164, 1295, 1322, 1241 of 2018 etc. batch, [Vadivel @ Mettai Vadivel Vs. The State, rep. by the Inspector of Police], dated 24.11.2018, it was decided that the Deputy Commissioner is having jurisdiction to pass an order. In another judgment of this Court passed by Hon'ble Mr.Justice P.N.Prakash, in Crl.R.C.No.78 of 2020 [Devi Vs. The Executive Magistrate cum Deputy Commissioner of Police, Law and Order and another], it was decided that the Deputy Commissioner is not having jurisdiction to pass an order under Section 122 (1) (b) Cr.P.C. This matter was already referred to the Larger Bench, and is pending before the Hon'ble Chief Justice. Since the matter is pending before the Hon'ble Chief Justice, this Court is not inclined to make any decision on those points.

8. It is seen that the petitioner is in custody for the past 1 1/2 months and all the cases mentioned against him are minor in nature. In the above circumstances, this Court is inclined to grant suspension of sentence. Accordingly, this petition is allowed, the substantive sentence of imprisonment alone is suspended and the petitioner is ordered to be released on bail till the disposal of the Revision Case, on his executing 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.I, Madurai and on further condition that:

(i) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of their any valid identity proof to ensure their identity.

sd/-
14/10/2020

/ TRUE COPY /

/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1. THE JUDICIAL MAGISTRATE NO.I, MADURAI.
2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
3. THE SUPERINTENDENT,CENTRAL PRISON,
MADURAI.
4. EXECUTIVE MAGISTRATE CUM
DEPUTY COMMISSIONER OF POLICE,
LAW AND ORDER, MADURAI CITY,
MADURAI.
5. THE INSPECTOR OF POLICE
E3 ANNA NAGAR (L AND O) POLICE STATION,
MADURAI CITY, MADURAI.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP (MD) No.4758 of 2020
IN
CRL RC (MD) No.538 of 2020
Date :14/10/2020

MS/VR/SAR-3/16.10.2020/4P.7C