



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Wednesday, the Twenty Third day of December Two Thousand and Twenty

WEB COPY

PRESENT

The Hon'ble Mrs.Justice R.THARANI

CRL MP(MD) No.5936 of 2020

IN

CRL RC(MD) No.630 of 2020

VEERA SUBBU

... PETITIONER/PETITIONER

Vs

1 TAMIL NADU GOVERNMENT REP. BY
THE INSPECTOR OF POLICE,
C2, SUBRAMANIPURAM POLICE STATION, (L&O),
MADURAI CITY, MADURAI.

2 THE EXECUTIVE MAGISTRATE/
DEPUTY COMMISSIONER OF POLICE,
MADURAI CITY,
MADURAI DISTRICT.

...RESPONDENTS/RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence passed in M.C.No.314 of 2020, dated 08.09.2020 on the file of the Executive Magistrate/Deputy Commissioner of Police, Madurai City.

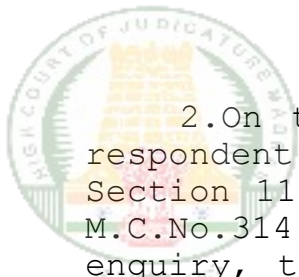
Prayer in CRL RC(MD) . 630/ 2020:

To set aside the judgment of conviction, dated 08.09.2020 made in M.C.314/NI.SA.NA & KA.DU.AA/M.MA/2020, on the file of the learned Executive Magistrate/ Deputy Commissioner of Police, Madurai, and sentencing the petitioner to undergo eight months and seven days imprisonment for violating the bond under Section 110 Cr.P.C and petitioner to be set liberty.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.A.B.NATARAJAN, Advocate for the petitioner and of Mr.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondents, the Court made the following order:-

This petition has been filed to suspend the order passed in M.C.No.314/NI.SA.NA & KA.DU.AA/M.MA/2020, dated 08.09.2020, on the file of the learned Executive Magistrate /Deputy Commissioner of Police, Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



2.On the side of the petitioner, it is stated that the first respondent forwarded a report before the second respondent under Section 110, 117 r/w. 113 of Cr.P.C. The same was taken on file as M.C.No.314 of 2020 and summon was served upon the petitioner. After enquiry, the petitioner executed a bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) under Section 117 of Cr.P.C. Subsequently, on 07.06.2020, the petitioner involved in another offence in Crime No.870 of 2020 under Section 294(b), 323 and 506(ii) of IPC. He violated the conditions imposed on the bond. On the basis of the report of the first respondent, the second respondent passed the impugned order. Against which, the petitioner preferred this Revision Case. Along with the revision, the petitioner has filed the petition for suspension of sentence.

3.On the side of the petitioner, it is stated that the impugned order under Section 117 of Cr.P.C., is illegal. The bond is only for keeping good behavior not for keeping peace. Section 122(1)(b) of Cr.P.C., is applicable only to case where the bond was obtained for keeping peace.

4.The learned counsel for the petitioner would refer to judgment of this Court in the case of **Muthu @ Muthuraja v. The Inspector of Police in Crl.O.P.No.20997 of 2016**, wherein this Court has observed as follows:

"This Court also perused the bond that is said to have been executed by the petitioner. The said bond has been executed in Form 13 under the Code of Criminal Procedure, which relates to bond for good behavior under Section 110 Cr.P.C., and it is not a bond under Section 107 Cr.P.C. Therefore, on the basis of the records, it is manifest that the order passed by the two Courts below warrant interference.

Accordingly, the orders of the Courts below are set aside and resultantly, this Criminal Original Petition is allowed. The petitioner is directed to be released forthwith, if not required in any other case."

5.On the side of the petitioner, it is stated that free legal assistance was not made available to the petitioner. In support of his contention, the judgment passed by the Hon'ble Supreme Court in the case of **Suk Das and another v. Union Territory of Arunachal Pradesh** in **AIR 1986 Supreme Court 991** is cited.

6.On the side of the petitioner, it is stated that no discussion about the cross examination of the witnesses was given in the impugned order. The ground case is only a dispute between the brothers, which is simple in nature. The first impugned order was passed, as if five witnesses were examined. Subsequently, the order was altered, after removing one of the witnesses. As the respondent



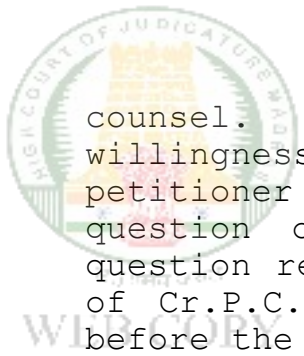
came to know that P.W.4 in earlier impugned order died, two days prior the date of the order, another copy was furnished to the petitioner, after deleting the statements regarding P.W.4.

7. On the side of the respondents, it is stated that notice was served upon the petitioner, and that the copies were furnished to him. He was given opportunity to cross examine the witnesses and the petitioner cross examined the eye witnesses. The petitioner has involvement in 12 cases and he is a notorious rowdy. He is a danger to the Society. All the procedures are scrupulously followed and prayed the petition to be dismissed.

8. The petitioner executed a bond under Section 110 Cr.P.C. The petitioner is having 12 previous cases, which lists as follows:

Sl.No	Crime No	Sections	Police Station
1.	1703 of 2010	302 of IPC	C2 Subramaniapuram PS
2.	602 of 2012	392 r/w. 397, 506 (ii) of IPC	C2 Subramaniapuram PS
3.	153 of 2013	341, 307 of IPC	B6 Jaihindpuram PS
4.	607 of 2013	392 r/w. 397, 506 (ii) of IPC	C3 S.S. Colony PS
5.	609 of 2013	392 r/w. 397, 506 (ii) of IPC	C3 S.S. Colony PS
6.	633 of 2014	147, 148, 341, 302, 109 of IPC and Sections 4, 5 of Explosive Substances Act	C3 S.S. Colony PS
7.	926 of 2014	392 r/w. 397, 506 (ii) of IPC	C1 Thideer Nagar PS
8.	828 of 2016	392 r/w. 397, 506 (ii) of IPC	C2 Subramaniapuram PS
9.	1210 of 2016	392 r/w. 397, 506 (ii) of IPC	C2 Subramaniapuram PS
10.	287 of 2017	110 of Cr.P.C.,	C2 Subramaniapuram PS
11.	213 of 2017	341, 364(A) of IPC	Thoothukudi District North PS
12.	1306 of 2017	392 r/w. 397, 506 (ii) of IPC	C2 Subramaniapuram PS

9. It is stated that the second respondent recorded the version of the petitioner in paragraph no.11 of the impugned order. The second respondent gave opportunity to the petitioner and instructed him to conduct cross examine either by himself or through his



counsel. The petitioner himself voluntarily expressed his willingness to conduct cross examination by himself. Since the petitioner has cross examined four prosecution witnesses, the question of providing free legal service does not arise. The question regarding the proceedings under Sections 122(1)(b) and 117 of Cr.P.C., for violation of Section 110 of Cr.P.C., is pending before the larger bench. Section 122(1)(b) of Cr.P.C., is applicable to breach of bond. A bond can be executed either for keeping peace or for maintaining good behavior. Sub clause (e) is an integral part of Section 110 of Cr.P.C. The bond is executed only for keeping peace by a habitual offender. G.O.(Ms)No.181 dated 25.05.2014, authorize the Executive Magistrate to exercise power under Sections 107 to 110 of Cr.P.C., and the same was not set aside by any order. The petitioner is an active rowdy having connection with a group of rowdy elements, who act as hired goondas. The petitioner is having 12 previous cases including two murder cases and seven cases under Section 397 of IPC and a case under Section 307 of IPC. If the impugned order is set aside, there is possibility for the petitioner to create problem in the locality and to cause hindrance to the peace and harmony and prayed the petition to be dismissed.

10.It is seen that the question regarding the proceedings under Sections 122(1)(b) and 117 of Cr.P.C., for violation of Section 110 of Cr.P.C., is pending before the larger bench. The petitioner is involved in 12 previous cases including two murder cases and 7 cases under Section 392 of IPC.

11.A perusal of the records reveals that the notice was served upon the petitioner and copies were furnished to the petitioner. The petitioner has come forward to cross examine the witness by himself. On 07.09.2020, he has examined two witnesses and he asked adjournment for the cross examination of other witness and the matter was adjourned to 08.09.2020. The petitioner cross examined one witness on that date and he did not come forward to cross examine other witnesses.

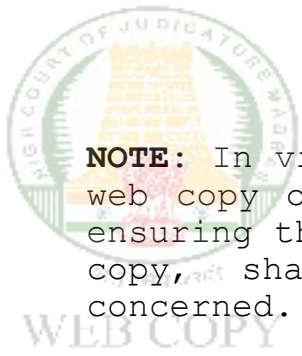
12.It is seen that sufficient opportunity was given to the petitioner. Considering the period of incarceration and considering the previous antecedent of the petitioner, this Court is not inclined to suspend the order passed by the second respondent dated 08.09.2020, at the present stage.

13.With the above observation, this Criminal Miscellaneous Petition is dismissed.

sd/-
23/12/2020

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



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 INSPECTOR OF POLICE,
C2, SUBRMANIYAPURAM POLICE STATION, (L&O) ,
MADURAI CITY, MADURAI.
2. THE EXECUTIVE MAGISTRATE/
DEPUTY COMMISSIONER OF POLICE,
MADURAI CITY,
MADURAI DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to M/S.A.B.NATARAJAN, Advocate (SR.No.27100 dated 23/12/2020)

ORDER
IN
CRL MP(MD) No.5936 of 2020 IN
CRL RC(MD) No.630 of 2020
Date :23/12/2020

MRN
SRS/SMA/SAR-II/30.12.2020/5P/6C