



BAIL SLIP

Crl.RC.No.294 of 2021

The Petitioner namely Dharuma @ Dharuman, S/o.Murugan, Aged 24 years was released on bail as per the order of this Court dated 02.06.2021 made in CRL.M.P.No.5753/2021 in CRL.RC.No.294 of 2021 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2021

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Revision Case No.294 of 2021

Dharuma @ Dharuman .. Petitioner / Respondent

Vs.

1.The Sub Divisional Executive Magistrate/
Revenue Divisional Officer,
Tiruvannamalai.

2.The Inspector of Police
Tiruvannamalai Town Police Station
Tiruvannamalai District

.. Respondents / Respondents

Prayer : Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to call for the records pertaining to the order dated 28.04.2021 passed by the 1st respondent Sub Divisional Executive Magistrate / Revenue Divisional Officer, Tiruvannamalai in Na.Ka.A4/1476/2021 under Section 122(1)(b) of Cr.P.C. and set aside the same.

For Petitioner : Mr.Sathiyaraj,E.

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)



ORDER

(The case has been heard through video conference)

This Criminal Revision has been filed to set aside the order dated 28.04.2021 passed by the 1st respondent Sub Divisional Executive Magistrate/Revenue Divisional Officer, Tiruvannamalai in Na.Ka.A4/1476/2021 under Section 122(1)(b) of Cr.P.C.

2. The case of the petitioner is that originally the petitioner involved in Crime No.803 of 2018 for offence under Section 395, 397 IPC read with 3(1) TN PPDL Act and Crime No.1514 of 2018 for offence under Sections 294(b), 307, 324, 341, 506(2) IPC and subsequently, the petitioner was asked to execute a bond under Section 110 Cr.P.C. for maintaining good behavior. Accordingly, the petitioner executed the bond on 12.02.2021 before the 1st respondent. However, during bond period the petitioner is alleged to have involved in another case in Crime No.139 of 2021 for offence under Section 8(C) read with 20(b)ii(B) NDPS Act 1985 following which, he was arrested and remanded to judicial custody and when he was on bail, the 1st respondent issued summons to the petitioner through 2nd respondent and initiated proceedings under Section 122(1)(b) Cr.P.C. for breach of bond conditions. Accordingly, the petitioner appeared before the 1st respondent on 28.04.2021 and subsequently the 1st respondent passed an order canceling the bond executed by the petitioner under Section 110 Cr.P.C. and sentenced him to undergo the remaining bond period. Challenging the said order of cancellation of bail bond, the present revision has been filed before this Court.

3. The learned Counsel for the petitioner would submit when the petitioner was on bail in Crime No.803 of 2018 for offence under Section 395, 397 IPC read with 3(1) TN PPDL Act and Crime No.1514 of 2018 for offence under Sections 294(b), 307, 324, 341, 506(2) IPC, he executed a bond on 12.02.2021 before the 1st respondent under Section 110 Cr.P.C. for good behavior. During bond period the petitioner is alleged to have involved in another case in Crime No.139 of 2021 for offence under Section 8 (C) read with 20(b)ii(B) NDPS Act 1985. Therefore, the 1st respondent initiated proceedings under Section 122(1)(b) Cr.P.C. and issued summons to the petitioner directing him to appear on 28.04.2021. Accordingly, the petitioner appeared before the 1st respondent on 28.04.2021 whereas, the 1st respondent without giving any opportunity to the petitioner to engage a counsel and without even serving copies of the case, simply passed an order under Section 122(1)(b) of Cr.P.C. and cancelled the bond executed by the petitioner under Section 110 Cr.P.C. which violates constitutional rights. Therefore, the order is liable to be set aside.



4. The learned Government Advocate (Crl. Side) would submit that originally the petitioner involved in Crime No.803 of 2018 for offence under Section 395, 397 IPC read with 3(1) TN PPDL Act and Crime No.1514 of 2018 for offence under Sections 294(b), 307, 324, 341, 506(2) IPC and he was asked to execute a bond under Section 110 Cr.P.C. to maintain good behaviour. Accordingly, the petitioner executed the bond under Section 110 Cr.P.C. on 12.02.2021 before the 1st respondent. During the bond period again the petitioner involved in another case in Crime No.139 of 2021 for offence under Section 8(C) read with 20 (b)ii(B) NDPS Act 1985 following which, he was arrested and remanded to judicial custody. Since, the petitioner breached the condition imposed in the bail order as well as in the bond executed under Section 110 Cr.P.C. the 1st respondent issued summons to the petitioner through 2nd respondent and initiated proceedings under Section 122(1)(b) Cr.P.C. Accordingly, the petitioner was produced before the 1st respondent on 28.04.2021 and after enquiry, the 1st respondent cancelled the bond executed by the petitioner under Section 110 Cr.P.C. and also sentenced the petitioner to undergo the remaining bond period. The 1st respondent was satisfied that during the bond period, the petitioner involved in another case and prima facie found that the petitioner breached the bond and therefore, the proceedings was initiated under Section 122 (1) (b) of Cr.P.C. Therefore, there is no violation of Principles of Natural Justice and there is no merit in the revision.

5. A reading of impugned order dated 28.04.2021 passed by the 1st respondent is a non speaking order and it does not show anything about the procedure adopted by the 1st respondent and whether, the petitioner was given sufficient opportunity. Before passing orders under Section 122 (1) (b) of Cr.P.C. the Executive Magistrate must satisfy that during the bond period the accused involved in another case. Further, before passing orders, sufficient opportunity must be given to the accused to defend his case. Whereas, in this case, the order passed by the 1st respondent seems vague and it does not speak anything as to whether the petitioner was given opportunity. Therefore, in this circumstance, this Court is inclined to set aside the order passed by the 1st respondent.

6. Accordingly, this Criminal Revision case is allowed and the impugned order dated 28.04.2021 passed by the 1st respondent is set aside. The matter is remitted back to the 1st respondent and the 1st respondent is directed to initiate a fresh proceedings after serving copies of the case and after giving sufficient opportunity to the petitioner to engage a counsel on his own and in case if the petitioner is unable to engage a counsel on his own, the 1st respondent has to provide a Legal Aid Counsel through the District Legal Services Authority. After



giving opportunity to the petitioner, the Executive Magistrate must satisfy himself and thereafter, pass a speaking order in accordance with law.

7. Bail bond if any executed by the petitioner shall stand canceled.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate,
Tiruvannamalai.
 - 2.The Sub Divisional Executive Magistrate/
Revenue Divisional Officer,
Tiruvannamalai.
 - 3.The Inspector of Police,
Tiruvannamalai Town Police Station,
Tiruvannamalai District.
 - 4.The Superintendent,
Central Prison,
Vellore.
 - 5.The Public Prosecutor Officer,
High Court, Madras.
 - 6.The Section Officer,
Criminal Section,
High Court, Madras.
- +1cc to Mr.E.Sathiyaraj, Advocate (SR No.37968)

Criminal Revision Case No.294 of 2021

NMI (CO)
PR (16/08/2021)