



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.386 of 2021 &
Crl.M.P.No.6272 of 2021

Nagaraj

... Petitioner

Vs.

1. The Executive Magistrate and
Deputy Commissioner of Police,
Adyar, Chennai - 20.
2. The Inspector of Police,
J-8, Neelankarai Police Station,
Greater Chennai - 115.

... Respondent

PRAYER: Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the order passed in M.P.No.10 of 2020, dated 18.09.2020 in Na.Ka.No.120/Nir./SE.NADU & KA.DHU.AA/ADYAR/2020 and set aside the same and release the petitioner Nagaraj, aged 27 years, who is confined in Central Prison, Puzhal, Chennai.

For Petitioner : Mr.C.V.Kumar

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

O R D E R

This Criminal Revision Case has been filed to set aside the order passed by the first respondent vide proceedings dated 18.09.2020, in M.P.No.10 of 2020, in Na.Ka.No.120/Nir./SE.NADU & KA.DHU.AA/ADYAR/2020.

2. It is the case of the second respondent that the petitioner executed a bond for good behaviour under Section 110



of Cr.P.C. in M.C.No.17 of 2020, on 26.08.2020 and thereafter, the petitioner involved in two other cases viz., Crime No.1157 of 2020 was registered for the offence under Sections 457, 511 of IPC and Crime No.1158 of 2020 was registered for the offence under Section 379 of IPC. Since the petitioner had indulged in the other offences immediately to the execution of bond in M.C.No.17 of 2020, the first respondent passed the detention order on 18.09.2020, detaining the petitioner for a period of 357 by invoking Section 122 (1)(b) of Cr.P.C. Challenging the same, the accused has filed this Revision.

3. The learned counsel for the revision petitioner would submit that the first respondent has not conducted the enquiry and offered an opportunity to the petitioner to put forth his defence. It is also further contended that the first respondent has failed to consider the fact that the first case, which is the basis for passing an order under Section 110 of Cr.P.C. and 2nd case for invoking detention order under Section 122 of Cr.P.C., both were registered by the second respondent. The learned counsel for the petitioner would submit that while the petitioner was in judicial custody, the first respondent without providing sufficient opportunity and legal assistance to the petitioner to defend his case passed the order, which violates the principles of natural justice. Therefore, the order passed by the first respondent is liable to be set aside.

4. The learned Government Advocate (Criminal Side) for the respondents would submit that sufficient opportunity was given to the petitioner before passing the order, however, the same was not utilized by the petitioner. The first respondent, on proper appreciation of materials, sentenced the petitioner to undergo imprisonment for a period of 357 days by invoking Section 122(1)(b) of Cr.P.C. for the breach of bond executed under Section 110 of Cr.P.C., and as such, no interference is required.

5. Heard the learned counsel on either side and perused the materials placed on record.

6. Admittedly, the petitioner executed a bond for good behaviour under Section 110 of Cr.P.C. in M.C.No.17 of 2020, on 26.08.2020. During the pendency of the said bail bond, the petitioner was involved in two other cases viz., Crime No.1157 of 2020 was registered for the offence under Sections 457, 511 of IPC and Crime No.1158 of 2020 was registered for the offence under Section 379 of IPC and hence, the petitioner was arrested and remanded to judicial custody on 04.09.2020. When the petitioner was in judicial custody, the second respondent police initiated action against the petitioner under Section 122(1)(b) Cr.P.C and he was produced before the first respondent on



15.09.2021. After due enquiry, the first respondent on 18.09.2020 passed the final order and directed the petitioner to undergo imprisonment for the remaining period as per the bond.

7. On a careful perusal of the records, it is seen that legal assistance has not been provided to the petitioner/accused, which is one of the rights of the accused. The first respondent before proceeding with the case, he should have ensured that the petitioner engaged a counsel or he is willing to engage a counsel. The accused, who is in custody, has to be provided with legal assistance by engaging a counsel on his own. If the petitioner is not in a position to engage a counsel on his own, it is the bounden duty of the Court/respondent police to provide legal assistance through Legal Services Authority. In this case, the first respondent ought to have offered adequate time to the petitioner to engage a counsel and to defend his case or should have engaged a counsel through Legal Services Authority. Admittedly, on the date of examination of the witnesses, the accused was in custody and he was produced before the first respondent on Prisoner's Transit Warrant. Therefore, the first respondent should have provided legal assistance to the petitioner through the legal services authority to defend his case.

8. Under these circumstances, this Court finds that no sufficient opportunity was given to the petitioner to defend his case. Therefore, the order passed by the first respondent dated 18.09.2020 is set aside and the matter is remitted back to the first respondent to dispose of the case in accordance with law, within a period of two months from the date of receipt of a copy of this order. The first respondent is also directed to provide legal assistance to the petitioner through the Legal Services Authority, if the petitioner is not in a position to engage a counsel on his own. The petitioner is set at liberty on his own bond, if his presence is not required for any other cases. The petitioner is directed to cooperate for the enquiry.

9. Accordingly, this Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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Deputy Commissioner of Police,
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2. The Inspector of Police,
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3. The Central Prison, Puzhal,
Chennai.
4. The Government Advocate (Criminal Side)
Madras High Court, Chennai.

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SR-II (CO)
HS (19/07/2021)