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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.435 of 2021
and
Crl.MP.No.7119 of 2021

SIVAKUMAR

..Petitioner/Accused

Vs.

1. The Sub-Divisional Executive Magistrate cum
Revenue Divisional Officer
Mannargudi
Thiruvarur District

...Respondent/Detaining Authority

2. State Represented by
Inspector of Police
Kottur Police Station
Thiruvarur District

... Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C, to set aside the detention order passed under Section 122(1)(b) of Cr.P.C. by the learned Sub-Divisional Executive Magistrate cum Revenue Divisional Officer, Mannargudi, Thiruvarur District in M.C.No.01/2021/A3 dated 24.03.2021.

For Petitioner : Mr.Swami Subramanian

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

O R D E R

The Criminal Revision Case has been filed seeking to set aside the detention order passed under Section 122(1)(b) of Cr.P.C. by the learned Sub-Divisional Executive Magistrate cum Revenue Divisional Officer, Mannargudi, Thiruvarur District in M.C.No.01/2021/A3 dated 24.03.2021.

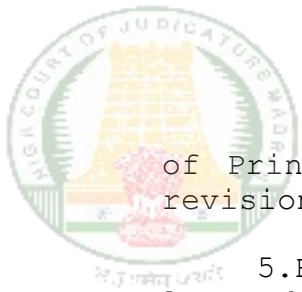
2. The petitioner who is involved in Crime No.1079 of 2020 for the offence punishable under Section 302 IPC was released on bail. At that time, the petitioner was asked to execute a bond under Section 110 Cr.P.C. for good behavior and accordingly he



executed the same. Subsequently, the petitioner involved in another case in Crime No.78 of 2021 for the offence punishable under Sections 294(b) and 506(ii) IPC and was arrested on 14.01.2021. Since, the petitioner breached the bond condition executed under Section 110 Cr.P.C., the 1st respondent initiated proceedings under Section 122(1)(b) Cr.P.C. based on the report filed by the second respondent and the petitioner was produced before the 1st respondent on 11.03.2021 and subsequently, he was produced on 20.03.2021 and 22.03.2021 and after enquiry, on 24.03.2021 the 1st respondent passed an order by cancelling the bond and sentenced him to undergo the remaining bond period. Challenging the said order of cancellation of bail bond, the present revision has been filed by the petitioner.

3. The learned Counsel for the petitioner would submit that when the petitioner was on bail in Crime No.1079 of 2020, the petitioner had executed a bond under Section 110 Cr.P.C. on 13.01.2021. Subsequently, on the same day i.e. 13.01.2021, the petitioner involved in another case in Crime No.78 of 2021 for the offence under Section 294(b) and 506(ii) of IPC, following which, he was arrested and remanded to the judicial custody on 14.01.2021 and while he was in custody, he was produced before the 1st respondent on 11.03.2021 and subsequently, on 20.03.2021 and 22.03.2021 and without giving any opportunity to the petitioner and serving copies of the case and to engage a counsel, the 1st respondent 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 the petitioner had involved in a murder case in Crime No.1079 of 2020 and he was granted bail vide Crl.M.P. No.1942 of 2020 on 07.12.2020 and subsequently, he executed a bond on 13.01.2021 under Section 110 Cr.P.C. to maintain good behavior. However, on the same day the petitioner involved in another case in Crime No.78 of 2021 for the offence under Section 294(b) and 506(ii) IPC and he was arrested and remanded to judicial custody on 14.01.2021. 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 2nd respondent filed a report before the 1st respondent and after giving opportunity, 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 therefore, 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. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and also perused the materials available on record.

6. It is seen that initially the petitioner was arrested on 04.08.2020 in Crime No.1079 of 2020 for offence punishable under Section 302 IPC. Thereafter, he was granted bail on 07.12.2020 vide Crl.M.P. No.1942 of 2020 by the Principal District Sessions Judge, Tiruvarur, and subsequently, the petitioner was asked to execute a bond under Section 110 Cr.P.C. to maintain good behavior and accordingly, he executed a bond on 13.01.2021. Thereafter, during bond period, the petitioner is alleged to have involved in another Crime No.78 of 2021 and he was arrested and remanded to judicial custody on 14.01.2021. Subsequently, the proceedings under Section 122 (1)(b) Cr.P.C. was initiated by the 1st respondent and they passed orders on 24.03.2021 by cancelling the bond executed by the petitioner under Section 110 Cr.P.C. Challenging the same, the petitioner has filed the revision before this Court.

7. A careful reading of the order passed by the 1st respondent shows that the order has been passed while the petitioner was in custody and the petitioner was not given any opportunity either to engage a counsel by himself or through Legal Services Authority.

8. This Court is of the opinion that when an accused is in custody and if any proceedings has to be initiated by any authority, sufficient opportunity should be given to the accused to defend his case by engaging a counsel by himself failing which, the authority or the Court concerned has to provide a Legal Aid Counsel through Legal Services Authority. In this case, the said procedure has not been followed by the 1st respondent which violates the constitutional rights. Therefore, this Court is inclined to set aside the order passed by the 1st respondent.

9. In view of the above, the matter is remitted back to the 1st respondent and the 1st respondent is directed to initiate a fresh proceedings after giving sufficient opportunity to the petitioner to engage a counsel on his own or the 1st respondent has to provide a Legal Aid Counsel through the District Legal Services Authority and dispose of the matter in accordance with law.



10. With the above observations, this Criminal Revision case is allowed. Consecutively, connected miscellaneous petition is closed.

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s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

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To

1. The Sub-Divisional Executive Magistrate cum
Revenue Divisional Officer
Mannargudi, Thiruvarur District
 2. The Superintendent
Central Prison, Tiruchirapalli
 3. The Inspector of Police
Kottur Police Station
Thiruvarur District
 4. The Public Prosecutor,
High Court, Madras.
 5. The Judicial Magistrate No. II
Mannargudi, Thiruvarur District
- +1 CC to Mr. Swami Subramanian, Advocate sr 38741.

Cr1.R.C.No.435 of 2021

PM(CO)
SP(14/09/2021)