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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.471 of 2019

Selvazhagi

... Petitioner

..vs..

1. The Executive Magistrate cum
Deputy Commissioner of Police,
Madhavaram District.
2. State : Inspector of Police (Law & Order)
M5 Ennore Police Station,
Chennai - 600 057.

... Respondents

Criminal Revision Case filed under Section 397 and 401 Cr.P.C, to set aside and revise the order dated 07.05.2019 passed by the 1st respondent in M.P.No.2 of 2019 in R.C.No.41/Sec.Pro/DCP MVM/2019 on the file of the 1st respondent.

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

O R D E R

This Criminal Revision Case has been filed against the order dated 07.05.2019 passed in M.P.No.2 of 2019 in R.C.No.41/Sec.Pro/DCP MVM/2019 by the Executive Magistrate-cum-Deputy Commissioner of Police, Madhavaram District.

2.According to the petitioner, the first respondent passed an order dated 07.05.2019 under Section 122 (1) (b) Cr.P.C., in and by which, the bail bond executed by the petitioner was cancelled and also directed the petitioner to undergo imprisonment for the remaining period in the bond period. Challenging the said order, the petitioner is before this Court.



3.The learned counsel for the petitioner would submit that while, the petitioner was in custody in Crime No.174 of 2019, on Prisoner's Transit Warrant, she was produced before the first respondent and without affording any opportunity to the petitioner to engage a counsel to defend her case and the first respondent passed the order under Section 122 (1) (b) Cr.P.C. Therefore, the impugned order passed by the first respondent is liable to be set aside.

4.The learned Government Advocate (Crl.Side) would submit that after providing sufficient opportunity only the petitioner was produced before the first respondent for enquiry. At the time of trial, the petitioner has not raised any request regarding legal assistance, but, now, the petitioner has raised the said objection. Hence, there is no merit in this case and the same may be liable to be dismissed.

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

6. Admittedly, on execution of bail bond under Section 110 Cr.P.C, the petitioner was involved in another case in Crime No.174 of 2019 for the offence punishable under 8(c) r/w 20(b) (ii) (B) of NDPS Act. Thereafter, the first respondent police initiated proceedings against the petitioner under Section 122 (1) (b) of Cr.P.C for the breach of bond executed under Section 110 Cr.P.C.

7.On a careful perusal of the records, it is seen that the petitioner was summoned before the first respondent on Prisoner's Transit Warrant, however, no opportunity was provided to the petitioner to engage a counsel.

8.It is a well settled proposition of law, 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 respondent police/Court to provide legal assistance through Legal Services Authority. This Court, time and again, gave directions to the authorities concerned to provide sufficient opportunity to the petitioner to defend his/her case. In the present case, the first respondent ought to have offered adequate time to the petitioner to engage a counsel on her own or to engage a counsel through Legal Services Authority, which violates principles of natural justice.

9.In such a view, the order passed by the first respondent dated 07.05.2019 is hereby set aside and the matter is remitted back to the first respondent for fresh consideration. The first respondent is 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 her own and dispose of the case in accordance with law as early as possible. The petitioner shall co-operate with the respondents for enquiry.

10. With the above direction, this Criminal Revision Case is allowed.

Sd/-
Assistant Registrar (CS)

// True Copy //

Sub Assistant Registrar

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To

1. The Executive Magistrate cum
Deputy Commissioner of Police,
Madhavaram District.
2. The Inspector of Police (Law & Order)
M5 Ennore Police Station,
Chennai - 600 057.
3. The Public Prosecutor,
High Court, Madras.

Criminal Revision Case No.471 of 2019

SMI (CO)
SU (19/08/2021)