



BAIL SLIP

The Petitioner/Accused Viz., Kutty @ Kuralarasan was released on bail as per the Order of this Court Dated 28/10/2020 in Crl.M.P.No.5839 of 2020 in Crl.R.C.No.832 of 2020 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.No.832 of 2020
&
Crl.M.P.No.5839 of 2020

Kutty @ Kuralarasan
S/o, Iraniyan

... Petitioner

Versus

1. State rep by
The Inspector of Police, (Law and Order),
S-8, Adambakkam Police Station,
Chennai -88.

2. The Executive Magistrate-cum-
Deputy Commissioner of Police,
St.Thomas Mount District,
Chennai City.

... Respondents

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order in Misc.Petition No.9/2020 in Na.Ka.No.402/Ni.Se.Na.Ka.Thu.Aa.Pa.Tho.Ma/2019 vide an order dated 24.07.2020 on the file of the 2nd respondent.

For Petitioner : Mr.S.N.Arunkumar

For Respondent : Mr.S.Sugendran

Government Advocate, (Criminal Side)

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ORDER

This Criminal Revision Petition has been filed to set aside the order in Miscellaneous Petition No.9/2020 in Na.Ka.No.402/Ni.Se.Na.Ka.Thu.Aa.Pa.Tho.Ma /2019 vide an order dated



24.07.2020 on the file of the second respondent.

2. The petitioner was alleged to have involved in case in Crime No.2268 of 2016 for the offence under sections 147, 148, 341, 302, 120(b), 149 IPC and he was released on bail. During that period, the petitioner was asked to execute a bond under Section 110 Cr.P.C. and accordingly he executed the same. During the bond period, the petitioner involved in another case in Crime No.17/2020 for the offence under section 8(c) r/w 17(a), 21(a), 22(a) NDPS Act. Following which, he was arrested and detained in the prison. During the custody, the petitioner was issued summon by the respondent and he was produced before the second respondent. Subsequently, the bond executed by the petitioner under section 110 Cr.P.C was cancelled by ad-hocking the procedure under section 122(1)(b)Cr.P.C. Challenging the said order passed by the second respondent, the petitioner has filed the present revision before this Court.

3. The learned Counsel for the petitioner would submit that when the petitioner was in custody, he was produced before the second respondent and the impugned order has been passed. The petitioner was not given any opportunity to defend his case. Further, the petitioner was not given opportunity to engage a counsel and that the authorities also not provided him any legal assistant which violates constitutional rights. Therefore, the order passed by the second respondent is liable to be set aside.

4. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the petitioner is the history sheeter and he involved in many cases. Since, the petitioner breached the condition imposed in the bond executed under Section 110 Cr.P.C., the first respondent filed a report before the second respondent and after giving opportunity, the second respondent cancelled the bond executed by the petitioner under Section 110 Cr.P.C. 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) Cr.P.C. Therefore, there is no violation of Principles of Natural Justice and there is no merit in the revision.

5. Admittedly, the petitioner executed a bond under section 110 Cr.P.C and during the pendency of the bond period, he was arrested and remanded to judicial custody for the offence under section 8(c) r/w 17(a), 21(a), 22(a) NDPS Act in Crime No.17 of 2020. While he was in custody, the petitioner was produced before the Executive Magistrate and the Magistrate passed the impugned order.



6. A careful reading of the order passed by the second 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.

7. 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 second respondent which violates the constitutional rights. Therefore, this Court is inclined to set aside the order passed by the second respondent.

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

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mfa
To

1. The Inspector of Police, (Law and Order),
S-8, Adambakkam Police Station,
Chennai -88.
2. The Executive Magistrate-cum-
Deputy Commissioner of Police,
St.Thomas Mount District,
Chennai City.
3. The Public Prosecutor,
High Court,
Madras.



Copy to

4.The Superintendent,
Sub Jail,
Saidapet,
Chennai - 15.

5.The Superintendent,
Central Prison, Puzhal,
Chennai.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras-104.

CRL.R.C.No.832 of 2020
&
Crl.M.P.No.5839 of 2020

GSM(CO)
CB(02/11/2021)