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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1067 of 2020
and
Crl.M.P.No.7386 of 2020

D.Vignesh @ Vicky

... Petitioner/Accused

Vs.

1.State rep by

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

...1st Respondent/Complainant

2.The Executive Magistrate-cum-

Deputy Commissioner of Police,
St.Thohmas Mount District,
Chennai City.

... 2nd Respondent

PRAYER: This Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the order dated 30.09.2020 passed by the 2nd respondent in Misc.Petition No.28/2020 in Na.Ka.No.533/Ni.se.Na.Ka.Thu.Aa/Pa.Tho.Ma/2019 and to allow the above Criminal Revision Case.

For Petitioner : Mr.S.N.Arunkumar

For Respondents: Mr.S.Sugendran

Govt. Advocate (Crl.Side)

O R D E R

The present criminal revision has been filed to set aside the order dated 30.09.2020 passed by the 2nd respondent in Misc.Petition No.28/2020 in Na.Ka.No.533/Ni.se.Na.Ka.Thu.Aa/Pa.Tho.Ma/2019 and to allow the above Criminal Revision Case.

2. The petitioner involved in a case in Crime No.504 of 2019 for the alleged offence under Section 341, 294(b), 324 and 506 (ii) of IPC. After completion of enquiry, the petitioner was



arrested in S.No.87/Sec.pro/2019 under Section 110 of Cr.P.C., and proceedings were initiated in Na.Ka.No.533/Ni. Se. Na. Ka. Thu. Aa/Pa. Tho. Ma/2019 on the file of the 2nd respondent under Section 110 of Cr.P.C.

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3. After completing formalities, the petitioner was directed to execute a bond under Section 110 of Cr.P.C., for keeping good behavior for a period of 2 years failing which an imprisonment for 2 years to be served and Rs.10,000/- to be paid as fine along with 2 sureties for a like sum and the same was executed by the petitioner and was let out on bail.

4. During the pendency of the bond period, the petitioner alleged to have involved in other case in Crime No.1248 of 2020 for the offence under Section 8(c) and 22(a) of Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 328 IPC. He was arrested and remanded to the judicial custody. While he was in custody, the proceedings initiated under Section 122(1)(b) of Cr.P.C., and cancelled the bond and convicted him and directed to undergo imprisonment for remaining bond period for the breach of bond. Challenging the said order, the petitioner has filed the present revision.

5. Learned counsel for the petitioner would submit that while the petitioner was in custody, he was produced on PT warrant on 24.09.2020 and after completing formalities under Section 207 of Cr.P.C., and again he was sent back to the jail and directed to produce on 30.09.2020. The petitioner was produced before the 2nd respondent on 30.09.2020 and after hearing the witnesses cancelled the bond, without giving opportunity either to engage a counsel or defence himself which is violation of principles of natural justice as well as denial of opportunity. Therefore, the order passed by the Executive Magistrate-cum-Deputy Commissioner of Police/the 2nd respondent herein, is liable to be set aside.

6. Learned Government Advocate (Crl.Side) would submit that though the petitioner executed a bond under Section 110 of Cr.P.C. During the bond period, he involved in other case in Crime No.1248 of 2020 for the offence under Section 8(c) and 22(a) of NDPS Act, 1985 and Section 328 IPC. Therefore, the 2nd respondent initiated the proceedings under Section 122(1)(b) of Cr.P.C., and passed the impugned order and every opportunity was given to the petitioner and therefore, the bond was cancelled. There is no merit in the present revision.

7. Heard both sides and perused the materials available on record.



8. Admittedly, the petitioner originally involved in a case in Crime No.504 of 2019 for the alleged offence under Section 341, 294(b), 324 and 506(ii) of IPC. While the case was pending, the petitioner executed a bond under Section 110 of Cr.P.C. During the pendency of the bond period, the petitioner was alleged to have involved in other case in Crime No.1248 of 2020 for the offence under Section 8(c) and 22(a) of NDPS Act, 1985. The 2nd respondent initiated the proceedings based on the report filed by the 1st respondent under Section 122 (1)(b) of Cr.P.C., and the records reveals that the petitioner involved in other case in Crime No.1248 of 2020 for the offence under Section 8(c) and 22(a) of NDPS Act, 1985 and he was arrested and remanded to the judicial custody. While the petitioner was in custody, he was produced before the 2nd respondent on PT warrant on 24.09.2020 and again he was produced before the 2nd respondent on 30.09.2020 and after enquiry, the order was passed on the same day.

9. Therefore, the records shows that the 2nd respondent has not given any opportunity and he has not provide any legal aid to the petitioner, which is violation of constitutional rights. Therefore, the impugned order passed by the 2nd respondent is hereby set aside and the matter is remitted back to the 2nd respondent and 2nd respondent is directed to initiate fresh proceedings and dispose of the same matter in accordance with law, after giving opportunity to the petitioner.

10. Accordingly, the criminal revision is disposed of with the above direction. Consequently, the connected criminal miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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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.Thohmas Mount District,
Chennai City.



3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.N.ArunKumar,Advocate, SR No. 36984

Crl.R.C.No.1067 of 2020
and
Crl.M.P.No.7386 of 2020

RLD(CO)
B.VC (03/08/2021)