

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.576 of 2021
and
Crl.MP.No.9580 of 2021

Surya ... Petitioner/Respondent/Respondent
Vs.

1. The Sub – Divisional Magistrate and
Revenue Divisional Officer
Tiruppur 1st Respondent

2. State by Inspector of Police
Perumanallur Police Station
Tiruppur District
...2nd Respondent/Petitioner/Complainant

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. to set aside and revise the order dated 07.05.2021 passed by the 1st respondent/Sub -Divisional Magistrate and Revenue Divisional Officer, Tiruppur in MC.No.19/2020/A1 in Perumanallur Police Station, Tiruppur in Crime No.139 of 2021 under Section 147, 148, 294(b), 323, 324 and 506(2) of IPC.

For Petitioner : Mr.K.Vasanthanayagan for
Mr.K.Prabakaran
For Respondents : Mr.J.C.Durairaj
Government Advocate (Crl.Side)

ORDER

The Criminal Revision Case has been filed seeking to set aside and revise the order dated 07.05.2021 passed by the 1st respondent/Sub-Divisional Magistrate and Revenue Divisional Officer, Tiruppur in MC.No.19/2020/A1.

2. The petitioner had involved in Crime No.533 of 2017 for the offences punishable under Sections 294(b), 323, 506(ii) IPC and subsequently, he was granted anticipatory bail. Thereafter, the petitioner was asked to execute a bond under Section 109 Cr.P.C. for good behavior and accordingly he executed the same. Subsequently, the petitioner involved in another case in Crime No.139 of 2021 for the offences punishable under Sections 147, 148, 294(b), 323, 324 and 506(2) of IPC following which, he was arrested and remanded to judicial custody. Since, the petitioner breached the bond conditions executed under Section 109 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 05.05.2021 and after enquiry, the 1st respondent passed an order on 07.05.2021 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 anticipatory bail in Crime No.533 of 2017 for the offences punishable under Sections 294(b), 323, 506(ii) IPC, he had executed a bond under Section 109 Cr.P.C. on 26.12.2020 for maintaining good behaviour. Subsequently, on 08.04.2021, the petitioner was arrested by the respondent police alleging that he had involved in another case in Crime No.139 of 2021 for the offences punishable under Sections 147, 148, 294(b), 323, 324 and 506(2) of IPC following which, the petitioner approached the Court below vide C.M.P.No.799 of 2021 seeking for bail and he was granted bail on 06.05.2021. Whereas, on the very next day i.e. on 07.05.2021, the 1st respondent passed the impugned

and thereby the petitioner is unable to come out even after grant of bail. He would submit that while the petitioner was in custody, he was served with summon on 03.05.2021 to appear before the 1st respondent on 05.05.2021 and he was produced before the 1st respondent on 05.05.2021 and he was not given any opportunity to defend his case. Whereas, the 1st respondent without giving him any opportunity, while he was in custody, has passed the impugned order and that the petitioner was not provided with any legal assistant 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 breached the condition imposed in the anticipatory bail order as well as in the bond executed by him under Section 109 Cr.P.C. and thereby, based on the report of the 2nd respondent, the 1st respondent initiated proceedings under Section 122 (1) (b) of Cr.P.C. and cancelled the bond executed by the petitioner under Section 109 Cr.P.C. after giving him sufficient opportunity. Therefore, 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 the petitioner had involved in a case in Crime No.533 of 2017 for the offences punishable under Sections 294(b), 323, 506(ii) IPC and subsequently, he was granted anticipatory bail. Thereafter, the petitioner was asked to execute a bond under Section 109 Cr.P.C. for good behavior and accordingly, the petitioner executed the same. Subsequently, during bond period, the petitioner is alleged to have involved in another case in Crime No.139 of 2021 for the offences punishable under Sections 147, 148, 294(b), 323, 324 and 506(2) of IPC and thereby, he was arrested and remanded Judicial custody. Since, the petitioner breached the bond condition executed under Section 109 Cr.P.C., the 1st respondent initiated proceedings under Section 122(1)(b)

Cr.P.C. and passed orders on 07.05.2021 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. In many cases, this Court on earlier occasions has given directions 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. Whereas, in this case, the said procedure has not been followed by the 1st respondent which violates the constitutional rights and the impugned order has been passed by the 1st

respondent while the petitioner was in custody and without giving him opportunity to engage a counsel to defend his case. Therefore, this Court is inclined to set aside the order passed by the 1st respondent.

9. Accordingly, 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 him a Legal Aid Counsel through the District Legal Services Authority and dispose of the matter in accordance with law, after giving sufficient opportunity to the petitioner.

10. It is represented that the petitioner has already been granted bail in Crime No.139 of 2021 by the II Additional Sessions Judge, Tiruppur, in Cr.M.P.No.799 of 2021 by order dated 06.05.2021. However, in view of the impugned order passed on 07.05.2021, the petitioner is now in custody. Hence, the petitioner is ordered to be released on bail forthwith, if his custody is not required in any other case.

11. With the above observations, this Criminal Revision case is disposed of. Consecutively, connected miscellaneous petition is closed.

22.09.2021

Internet: Yes/No

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Note: Issue order copy on 22.09.2021



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To

1. The Sub – Divisional Magistrate and
Revenue Divisional Officer
Tiruppur
2. The Inspector of Police
Perumanallur Police Station
Tiruppur District
3. The Superintendent
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

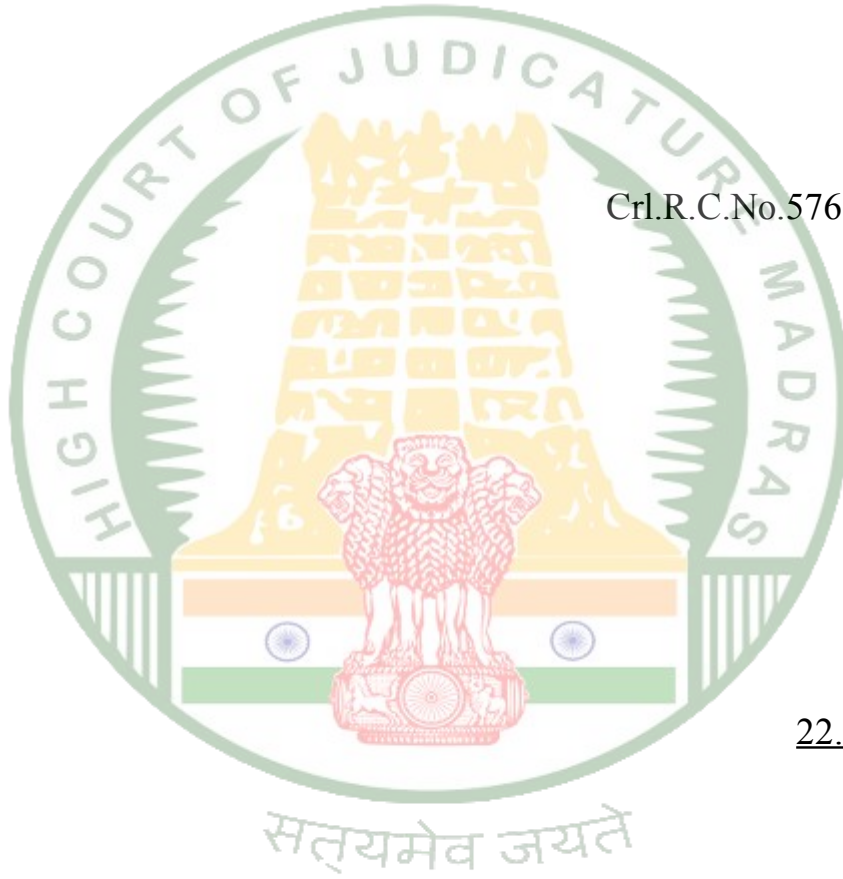


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P.VELMURUGAN, J.

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