

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1161 of 2020

Nithyanandhan @ Anandha @ Vellai Anadh ... Petitioner

Vs.

1. State rep.by the
Inspector of Police, (Law and Order),
S-10, Pallikaranai Police Station,
Chennai-100.

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

Respondents

PRAYER: Criminal Revision Petition filed under 397 r/w 401 of Cr.P.C. to set aside the order passed in M.P.No.30 of 2020 in Na.Ka.No.146/Ni.se.Na.Ka.Thu.Aa/Pu.Tho.Ma/2020 vide order dated 19.10.2020, on the file of the second respondent.

For Petitioner : Mr.S.N.Arunkumar

For Respondents: Mr.A.Madhan
Government Advocate (Crl.Side)

सत्यमेव जयते
O R D E R

The petitioner is the accused in Crime No.1102 of 2019 for the offences under Section 8(c), 20(b), (ii) (A) of NPDS Act and now he is in custody from 30.09.2020. Challenging the same, the Criminal Revision Petition has been filed.

2. Brief facts:-

Originally, a case has been registered against the petitioner for the alleged offences under Section 8(c), 20(b), (ii) (A) of NPDS Act in Crime No.1102 of 2019 under Section 110

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of Criminal Procedure Code and on issuance of summons, on 28.07.2020, he appeared before the second respondent / Executive Magistrate-cum-Deputy Commissioner of Police, St.Thomas Mount District, Chennai City, and executed a bond for a sum of Rs.10,000/- to maintain good behaviour in his locality for a period of one year from the date of execution of the bond. Thereafter, it is alleged that based on the complaint given by one Kumar, the petitioner was arrested on 30.09.2020, for the alleged offence under Section 302 of IPC, in Crime No.1387 of 2020. Since the petitioner had indulged in the other offences immediately to the execution of bond in Crime No.1102 of 2019, the second respondent passed the order, ordering the petitioner to be imprisoned from 01.10.2020 to 29.07.2021. Challenging the same, the accused has filed this Revision.

3. The learned counsel for the petitioner would submit that the petitioner was produced before the second respondent on 12.10.2020 on P.T. warrant and was asked to appear on 19.10.2020, and on the same, viz., 19.10.2020 itself, the order was passed by the second respondent and as such, before cancellation of bond execution in connection with Crime No.1102 of 2019, sufficient time was not given to engage the counsel. It is further submitted that due to curfew on account of Covid-19 pandemic, no counsel could be engaged. Hence, the order passed by the first respondent is legally unsustainable and prays for setting aside the order passed by the second respondent.

4. The learned Government Advocate (Criminal Side) for the respondents would submit that sufficient opportunity was given to the petitioner before passing the order, however, the same was not utilized by the petitioner. The second respondent, on proper appreciation of materials, sentenced the petitioner to 301 days imprisonment under Section 122(1) of Cr.P.C. for the breach of bond executed under Section 110 of Cr.P.C., and as such, no interference is required.

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

6. A perusal of the order passed by the second respondent, it could be seen that the petitioner/accused produced before the second respondent on 19.10.2020 on P.T. warrant and papers were served on him under Section 207 of Cr.P.C. and the petitioner was directed to appear on 19.07.2020 for trial, and on the same, viz., on 19.07.2020 itself, the respondent came to the conclusion that the petitioner had committed breach of bond and sentenced him to imprisonment for 301 days, after deducting 64 days, without giving an opportunity

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to engage a counsel.

7. It is settled legal principles, granting of opportunity is mandatory before cancellation of the bond and if it is not done, it would amount to violation of natural justice, thereby, the duty is cast upon the Court to cancel the order. In the case also, the opportunity of hearing was not given to the accused by engaging the counsel before cancellation of bond.

8. Though the learned Government Advocate (Criminal Side) has submitted that sufficient opportunity was given, this Court is inclined to grant relief to the petitioner and the order passed by the second respondent, dated 19.10.2020, is hereby set-aside and the second respondent- Executive Magistrate-cum-Deputy Commissioner of Police is directed to give opportunity to the petitioner, and after giving opportunity of hearing, conduct enquiry and dispose the matter in accordance with law, within a period of three months.

9. The petitioner is directed co-operate for early disposal, by engaging the counsel. It is made clear, if the petitioner fails to appear and prolongs the case and not co-operated for disposal, the order passed by this Court shall stand cancelled automatically without any further reference to this Court and the order passed by the second respondent, dated 19.10.2020 in M.P.No.30 of 2020 in Na.Ka.No.146/Ni.se.Na.Ka.Thu.Aa/Pu.Tho.Ma/2020, will be confirmed.

10. With the above observation, this Criminal Revision Petition is disposed of.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

r n s
To

1. The Inspector of Police, (Law and Order),
S-10, Pallikaranai Police Station,
Chennai-100.

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

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3.The Public Prosecuto,
High Court, Madras.

+1cc to Mr.S.N.Arunkumar, Advocate SR.2288

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