



IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Thursday, the Sixteenth day of December Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL MISCELLANEOUS PETITION No.12397 of 2021

IN CRL.R.C.No.880 of 2021

VIVEK

[ PETITIONER ]

Vs

1 THE EXECUTIVE MAGISTRATE CUM  
DEPUTY COMMISSIONER,  
MYLAPORE TALUK,  
MYLAPORE DISTRICT, CHENNAI.

[ RESPONDENTS ]

2 THE INSPECTOR OF POLICE  
J-4, KOTTURPURAM POLICE STATION,  
CHENNAI-600 085

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspend the sentence and grant bail to the petitioner / petitioner in connection with the order made in M.P.No.11 of 2021 in Na.Ka.No.163/Nir.Se.Nadu/Ka.Thu / Mylapore District 2021 dated 26.10.2021 by the 1st respondent.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S. ILAYARAJA KANDASAMY, Advocate for the Petitioner and of MR.S.SUGENDRAN, Govt. Advocate (Crl. Side) on behalf of the Respondents the court made the following order:-

This Criminal Miscellaneous Petition has been filed by the petitioner/Accused, seeking suspension of sentence of imprisonment, imposed by the judgment dated 26.10.2021 passed in M.P.No.11 of 2021 in Na.Ka.No.163/Nir.Se.Nadu/Ka.Thu/Mylapore District 2021 by the Executive Magistrate cum Deputy Commissioner of Police, Mylapore Taluk, Chennai.



2. Learned Counsel appearing for the petitioner would submit that the petitioner was summoned by the first respondent on 09.03.2021 and without furnishing any material and without furnishing opportunity to the petitioner, he was compelled to furnish security for keeping good behaviour and accordingly, he had executed a bond under Section 110 Cr.P.C on 09.03.2021, whereas on 08.04.2021, he was falsely implicated by the second respondent in a case registered in Crime No.133 of 2021, for the offences under Sections 341, 294(b), 324, 506 (2) IPC and when he was in judicial custody, a PT warrant was issued by the first respondent on 18.10.2021 and he was produced before the first respondent on 20.10.2021 and without affording sufficient opportunity to defend his case, he has been clamped with the detention order directing him to be in prison for 151 days.

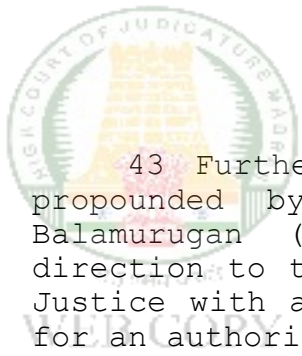
3. He would further submit that this Court, earlier, in the case of P.Sathish Vs State and another, in CrI.R.C.(MD) No.302 of 2017 dated 09.08.2017 had issued certain directions to be followed by the Executive Magistrate before clamping detention orders. Further, in the judgment rendered in Devi Vs State, in CrI.R.C.No.78 of 2020, by order dated 25.09.2020, another Hon'ble Judge of this Court had doubted the power of the Deputy Commissioner of Police in passing detention order and while deferring with the view taken in P.Sathish Vs State and another, cited supra had referred the issues to the Hon'ble Chief Justice for constituting a larger bench and thereby, it would take some time to decide the issue. He would therefore, pray for suspension of sentence pending revision.

4. Mr.S.Sugendran, the learned Govt.Advocate (CrI. Side), would submit that the petitioner had furnished a bond to be of good behaviour on 09.03.2021. On violation of the bond, he had involved in the offence on 08.04.2021. The second respondent, after affording sufficient opportunity, finding violation of the bond, passed the order of detention.

5. Heard the learned counsel for the petitioner and perused the materials on record.

6. This Court in "Devi Versus The Executive Magistrate-cum-Deputy Commissioner of Police, St.Thomas Mount District" in CrI.R.C.No.78 of 2020, by order dated 25.09.2020, had deferred with the findings given in CrI.R.C.No.982 of 2018, dated 24.11.2018 and held in paragraph No.20 as follows:-

"42 Since this Court respectfully differs from V. Parthiban, J. on the issue of applicability of Section 122(1)(b) Cr.P.C. to a good behaviour bond under Section 110(e), the Registry is directed to place this matter before the Hon'ble Chief Justice for appropriate orders.



43 Further, as this Court is not in agreement with the view propounded by another learned single judge of this Court in Balamurugan (supra), the following question is framed with a direction to the Registry to place the same before the Hon'ble Chief Justice with a request to constitute a Bench of appropriate strength for an authoritative pronouncement:

Whether G.O.Ms.No.659, Home (Cts. VIA) Department dated 12.09.2013 and G.O. Ms.No.181, Home (Cts.VIA) Department dated 20.02.2014 violate the scheme of separation of powers and are ultra vires the proviso to Section 6 of the Tamil Nadu District Police Act, 1868 (Central Act XXIV of 1868)?"

7. Now, both the learned Single Judges have referred the issues to be placed before the Hon'ble The Chief Justice for constituting a larger bench with regard to applicability of Section 122(1)(b) Cr.P.C., the power exercised by police officers can it be said to be power exercised as Executive Magistrate under the Code of Criminal Procedure and for other connected issues.

8. In view of the above and it is learnt that it would take some time for the above issues to be decided, this Court is inclined to suspend the sentence imposed on the petitioner with the following conditions:-

(i) The petitioner shall execute own bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) before the Superintendent, Central Prison, Puzhal, Chennai.

(ii) The petitioner shall appear before the second respondent Police everyday at 5.30 p.m., until further orders.

9. Hence, the Criminal Miscellaneous Petition is ordered to the extent of granting Suspension of Sentence. The Superintendent, Central Prison, Puzhal, Chennai is directed to set the petitioner at liberty, if his further detention is no longer required in connection with any other case or proceedings.

10. The Criminal Miscellaneous Petition is ordered accordingly.

-sd/-

16/12/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)  
High Court, Madras - 600 104.



TO

1 THE EXECUTIVE MAGISTRATE CUM  
DEPUTY COMMISSIONER,  
MYLAPORE TALUK, MYLAPORE DISTRICT, CHENNAI.

2 THE INSPECTOR OF POLICE  
J-4, KOTTURPURAM POLICE STATION,  
CHENNAI-600 085

3 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,  
CENTRAL PRISON, PUZHAL, CHENNAI.

5 THE SECTION OFFICER  
CRIMINAL SECTION,  
HIGH COURT, MADRAS.

+1 C.C. to M/S. ILAYARAJA KANDASAMY Advocate on payment of  
necessary charges SR.NO.14970

Order  
in  
CRL MP.12397/2021  
in  
CRL RC.880/2021

Date :16/12/2021

From 7.2.2001 the Registry is issuing certified  
copies of the BAIL/Anti.BAIL Orders in this format

JPA 17/12/2021