



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2021

CORAM

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**THE HONOURABLE MRS. JUSTICE R. THARANI**

Crl. R.C.(MD)No.27 of 2021  
and Crl.M.P.(MD)No.418 of 2021

Sivakumar Alias Babu (Male/Age-23)  
S/O Rajendran.

... Petitioner / Accused

Vs.

1.The Executive Magistrate No. II/  
the Tahsildar, Agasteeswaram Taluk,  
Nagercoil, Kanniyakumari District.

2.The Inspector of Police  
Vadaseri Police Station,  
Vadaseri, Kanniyakumari District.

3.The Superintendent of Prison,  
Central Prison, Palayamkottai,  
Tirunelveli District.

... Respondents / Complainants

**Prayer :** This Revision Case filed under Section 397 r/w. Section 401 of Cr.P.C., to call for the records pertaining to the order dated 19.12.2020 passed by the 1<sup>st</sup> respondent / the Executive Magistrate No.II / Tahsildar, Agasteeswaram Taluk, Nagercoil, Kanniyakumari District, in Na.Ka.C2/8010/2020 and to set aside the same as illegal.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mrs.S.Bharathi  
Government Advocate(Crl Side)

**ORDER**

This revision has been filed to set aside the order, dated 19.12.2020, passed by the first respondent, in Na.Ka.C2/8010/2020.

2. On the report of the second respondent, the first respondent obtained a bond from the petitioner on 13.11.2020, to maintain good behavior for a period of one year. Subsequently, the petitioner was arrested on 28.11.2020 in Crime No.627 of 2020 under Section 8(c) r/w. Section 20(b) (i), 25 of Narcotic Drugs and Psychotropic Substances Act. On the report of the second respondent, the first respondent initiated proceedings and passed the impugned order, on 19.12.2020. Against the impugned order, the petitioner preferred



this Criminal Revision.

3.On the side of the petitioner, it is stated that show cause notice was issued on 01.12.2020 and the petitioner submitted his explanation on 05.12.2020. Without proper enquiry, the impugned order was passed on 19.12.2020. It is stated that copies of the documents were not furnished to the petitioner. No legal assistance was given to the petitioner. No proper enquiry was conducted. Out of the 10 guidelines prescribed by the Court, only one guideline was followed by the first respondent. NDPS Act does not come under the purview of 110 Cr.P.C. proceedings and all the earlier cases, alleged to have been committed by the petitioner, are under NDPS Act and prayed the impugned order to be set aside.

4.On the side of the respondents, it is stated that all procedures were scrupulously followed by the first respondent. The petitioner already involved in five cases of similar nature. Since the petitioner was causing hindrance to the public, 110 Cr.P.C. proceedings was initiated against him and not for the offence under Section NDPS Act. After executing the bond, the petitioner involved in another offence and was arrested on 28.11.2020. Show cause notice was issued on 01.12.2020 and the petitioner submitted his explanation on 05.12.2020 and he was enquired by the first respondent on that date. Only after considering all the relevant records, the first respondent has passed the impugned order and prayed the petition to be dismissed.

5.A perusal of the records reveals that copies of the documents were not furnished to the petitioner. The petitioner was not given assistance of an Advocate. The petitioner was not given an opportunity to cross-examine the witnesses. The first respondent failed to record reasons for the decision and he has failed to record his satisfaction.

6.Hence, for the above reasons, the impugned order passed by the first respondent, in Na.Ka.C2/8010/2020, dated 19.12.2020, is set aside and the Criminal Revision Case is allowed. Consequently, connected Miscellaneous Petition is closed.

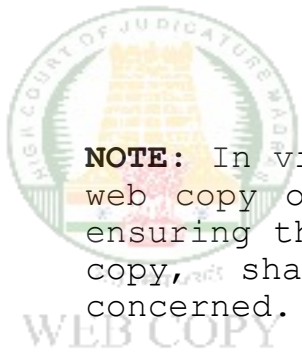
Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



**NOTE:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Executive Magistrate No. II/  
The Tahsildar,  
Agasteeswaram Taluk,  
Nagercoil,  
Kanniyakumari District.
- 2.The Inspector of Police  
Vadaseri Police Station,  
Vadaseri, Kanniyakumari District.
- 3.The Superintendent of Prison,  
Central Prison, Palayamkottai,  
Tirunelveli District.
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to Mr.N.PRAGALATHAN, Advocate ( SR-5474[F] dated 16/02/2021 )

Crl. R.C.(MD)No.27 of 2021

16.02.2021

(DKS)  
KV(25.02.2021) 3P 6C