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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.M.P.No.1281 of 2022

in Crl.R.C.No.135 of 2022

L.Mukesh @ Subash

... Petitioner

Vs.

1.The Sub-Divisional Magistrate-cum-
Revenue Divisional Officer,
Kanchipuram,
Kanchipuram District.

... Respondents

2.The State represented by
The Inspector of Police,
B-1, Siva Kanchi Police Station,
Kanchipuram,
Kanchipuram District.

PRAYER: The Criminal Miscellaneous Petition is filed under Section 397(1) of Cr.P.C., to suspend the sentence imposed by the Sub Divisional Magistrate and Revenue Divisional Officer, Kanchipuram, Sub-Division, Kanchipuram in Na.Ka.No.2305/2021/A1 dated 28.08.2021 and enlarge the petitioner on bail, pending disposal of the Criminal Revision Petition.

For Petitioner : Mr.A.Saranraj

For Respondents : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/Accused, seeking suspension of sentence of imprisonment, imposed against the petitioner in Na.Ka.No.2305/2021/A1 dated 28.08.2021 by the Sub Divisional Magistrate and Revenue Divisional Officer, Kanchipuram.

2. Learned Counsel appearing for the petitioner would submit that the petitioner was summoned by the first respondent on 23.07.2021 and without furnishing any material and without affording



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 23.07.2021, whereas on 28.07.2021, he was falsely implicated by the second respondent in cases registered in Crime No.1642 of 2021 for the offences punishable under Sections 147, 148, 449, 294(b), 307, 302, 506(ii), 120(B) I.P.C. r/w. 3 & 5 of Explosive Substances Act, 1908 and when he was in judicial custody, a PT warrant was issued by the first respondent on 28.08.2021 and the petitioner was produced before the first respondent on 28.08.2021 and without affording sufficient opportunity to defend his case, he has been clamped with the detention order directing him to be in prison for a period of 329 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. The learned Government Advocate (Crl. Side), would submit that the petitioner had furnished a bond to be of good behaviour on 23.07.2021. On violation of the bond, he had involved in the offence on 28.07.2021. The petitioner had previous cases before the execution of the bond, had involved himself in a subsequent case registered in Crime No.1642 of 2021 for the offences punishable under Sections 147, 148, 449, 294(b), 307, 302, 506(ii), 120(B) I.P.C. r/w. 3 & 5 of Explosive Substances Act, 1908. The first respondent after affording sufficient opportunity, finding violation of the bond, passed the order of detention.

5. Heard the learned counsel appearing on either side 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:-



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"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 of this Court 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 alone, with the following conditions:-

(a) The petitioner is ordered to be released on bail, on his executing a bond **for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only)** with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Kanchipuram;

(b) The petitioner and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.



(c) The petitioner shall report before the concerned respondent Police daily at 5.00 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, 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/-
25/03/2022

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 JUDICIAL MAGISTRATE,
NO.I, KANCHIPURAM

2 THE CHIEF JUDICIAL MAGISTRATE
CHENGALPATTU. [FOR INFORMATION]

3 THE SUB DIVISIONAL MAGISTRATE
AND REVENUE DIVISIONAL OFFICER, INSPECTOR
OF POLICE, B-1, SIVA KANCHI POLICE STATION,
KANCHEEPURAM DISTRICT.

4 THE INSPECTOR OF POLICE,
B-1, SIVA KANCHIPURAM STATION,
KANCHEEPURAM DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.



Copy To:

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

+1 C.C. to M/S A.SARANRAJ Advocate on payment of necessary
charges SR.NO.4565

Order

in
CRL MP.1281/2022
in
CRL RC.135/2022

Date :25/03/2022

From 7.2.2001 the Registry is issuing certified
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TA-29/03/2022