



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.No.1326 of 2022

in Crl.R.C.No.128 of 2022

Mallai (alias) Soundarrajan

... Petitioner

Vs.

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

... Respondents

2.The Inspector of Police,
Namakkal Police Station,
Namakkal District.

PRAYER: The Criminal Miscellaneous Petition is filed under Section 397 r/w 439 of the Code of Criminal Procedure, pleaded to Suspend the Sentence imposed upon th petitioner in Na.Ka.No.5875/2021 dated 13.01.2022 by the Sub - Divisional Magistrate cum Revenue Divisional Officer, Namakkal, Namakkal District and enlarge the petitioner on bail.

For Petitioner : Mr.S.Sheik Ismail

For Respondents : Mr.S.Sugendran

Additional Public Prosecutor

ORDER

(This case has been heard through video conferencing)

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.5875/2021 dated 13.01.2022 by the Sub - Divisional Magistrate cum Revenue Divisional Officer, Namakkal, Namakkal District.



2 Learned Counsel appearing for the petitioner would submit that the petitioner was summoned by the second respondent 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 12.02.2021, whereas on 01.04.2021, he was falsely implicated by the second respondent in a case registered in Crime No.550 of 2021, for the offence under Section 4(1), 5(1)(a), 6(1)(a) of Immoral Traffic (Prevention) Act, 1956 and also on 30.05.2021 registered a case in Crime No.943 of 2021 for the offence under Sections 328 IPC r/w 77 of Juvenile Justice Act & Section 24(1) of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, and summons was issued on the petitioner and he appeared on 15.11.2021 before the first respondent and on 13.01.2022, without affording sufficient opportunity to defend his case, he has been clamped with the detention order directing him to be in prison for the remaining 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 Additional Public Prosecutor, would submit that the petitioner had furnished a bond to be of good behaviour on 12.02.2021. On violation of the bond, he had involved in the offence on 01.04.2021. The first respondent, after affording sufficient opportunity, finding violation of the bond, passed the order of detention.

5 Heard the learned counsel 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 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:-

(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute his own bond for a sum of **Rs.15,000/- (Rupees Fifteen Thousand only)** before the Superintendent, Sub Jail, Rasipuram, in which the Petitioner has been confined and thereafter, on his release, the petitioner shall execute two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate No.1, Namakkal, within 15 days from the date of commencement of the Court's normal functioning, failing which the bail granted by this Court shall stand dismissed automatically and on further conditions that:



(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

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(c) 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, Sub Jail, Rasipuram, 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/-

04/02/2022

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 SUB - DIVISIONAL MAGISTRATE CUM
REVENUE DIVISIONAL OFFICER, NAMAKKAL,
NAMAKKAL DISTRICT.

2 THE JUDICIAL MAGISTRATE,
NO.1, NAMAKKAL.

3 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
NAMAKKAL POLICE STATION,
NAMAKKAL DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE OFFICER INCHARGE,
SUB JAIL, RASIPURAM.



Copy To:

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

C.C. to M/S.S.SHEIK ISMAIL Advocate on payment of necessary charges

Order

in
CRL MP.1326/2022

in
CRL RC.122/2022

Date :04/02/2022

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

TA-04/02/2022