



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.M.P.No.4213 of 2022

in Crl.R.C.No.415 of 2022

Joshva,  
S/o.Balaji @ Velayutham

... Petitioner

versus

1.The Executive Magistrate-cum-  
Deputy Commissioner of Police,  
Madhavaram District.

2.The State rep. by its  
The Inspector of Police,  
Manali Police Station,  
Chennai.

... Respondents

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) read with 401 of Cr.P.C., praying to suspend the sentence imposed by the 1<sup>st</sup> respondent in M.P.No.8 of 2021 dated 27.10.2021 and enlarge the petitioner on bail, pending disposal of this Petition.

For Petitioner : Mr.M.Prakash

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

O R D E R

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence imposed upon him, by the first respondent in M.P.No.8 of 2021 dated 27.10.2021 and to enlarge him on bail.

2. The learned counsel appearing for the petitioner would submit that the petitioner had involved in cases registered in Crime No.420 of 2021 for an offence punishable under Section 307 of IPC and Crime No.429 of 2021 for the offences punishable under Sections 8(C), 20(b)(ii)(B) of NDPS Act and subsequently, he was enlarged on bail. Thereafter, the petitioner had executed a bond under Section 110 Cr.P.C for keeping good behaviour on 14.09.2021, whereas on



18.10.2021, he was falsely implicated by the second respondent in a case registered in Crime No.1190 of 2021 for the offences punishable under Sections 294(b), 336, 307 and 506(2) of IPC r/w Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002. When the petitioner was in judicial custody, a PT warrant was issued by the first respondent on 25.10.2021 and the petitioner was produced before the first respondent 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 321 days.

3. He would further submit that this Court, earlier, in the case of P.Sathish Vs State and another, in Crl.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 Crl.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) appearing for the respondent police would submit that the petitioner had furnished a bond to be of good behaviour on 14.09.2021. On violation of the bond, he had involved in the offence on 18.10.2021. The petitioner had previous cases before the execution of the bond, had involved himself in a subsequent case registered in Crime No.1190 of 2021 for the offences punishable under Sections 294(b), 336, 307 and 506(2) of IPC r/w Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002. 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 Crl.R.C.No.78 of 2020, by order dated 25.09.2020, had deferred with the findings given in Crl.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 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, Thiruvottiyur;

(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 05.00pm., 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/-

04/04/2022

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

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

TO

1 THE JUDICIAL MAGISTRATE,  
THIRUVOTTIYUR.

2 THE CHIEF JUDICIAL MAGISTRATE  
TIRUVALLUR DISTRICT. [FOR INFORMATION]

3 THE SUPERINTENDENT,  
CENTRAL PRISON, PUZHAI, CHENNAI.

4 THE EXECUTIVE MAGISTRATE CUM  
DEPUTY COMMISSIONER OF POLICE,  
MADHAVARAM DISTRICT.

5 THE INSPECTOR OF POLICE,  
MANALI POLICE STATION,  
CHENNAI.

6 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

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

+1 C.C. to M/S. M.PRAKASH Advocate on payment of necessary charges SR.NO. 5099

Order  
in  
CRL MP.4213/2022  
in Crl.R.C.No.415 of 2022

Date :04/04/2022

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

RW 05/04/2022