



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.M.P.No.3107 of 2022

in

Crl.R.C.No.299 of 2022

Gopi @ Gopinath

... Petitioner

Vs.

1. The Executive Magistrate cum
Deputy Commissioner,
O/o. Deputy Coimissioner,
Flower Bazaar, Chennai.

2. The Inspector of Police,
B2, Esplanade Police Station,
I.c., Law and Order,
Chennai - 600 001

... Respondents

PRAYER: The Criminal Miscellaneous Petition is filed under Section 397 (1) and 439 of Cr.P.C., to suspend the execution of the sentence against the petitioner/accused in எம்.சி.146/நீ.செ.ந.கோ.து.ஆ./பூ.மா.2021 passed by the first respondent police and enlarge the petitioner on bail.

For Petitioner : Mr.P.Muthamizh Selvakumar

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 எம்.சி.146/நீ.செ.ந.கோ.து.ஆ./பூ.மா.2021 dated 21.01.2022 by the Executive Magistrate cum Deputy Coimissioner, Chennai.

2. Learned Counsel appearing for the petitioner would submit that the petitioner was summoned by the second respondent on 03.08.2021 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 21.12.2021, whereas on 13.01.2022, he was falsely implicated by the first respondent in cases registered in Crime No.10 of 2022 for the offences punishable under Sections 294(b), 324, 506(ii) of IPC & 4 of TNPWH Act and when he was in judicial custody, a PT warrant was issued by the second respondent on 21.01.2022 and the petitioner was produced before the second respondent on 21.01.2022 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 215 days.

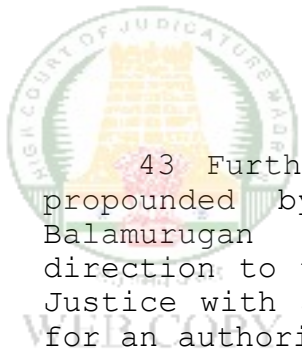
3. He would further submit that this Court, earlier, in the case of *P.Sathish Vs State and another*, in Crl.R.C.(MD) No.302 of 2017 dated 09.08.2017 had issued certain directions to be followed by the Executive Magistrate before clamping detention orders. Further, in the judgment rendered in *Devi Vs 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), would submit that the petitioner had furnished a bond to be of good behaviour on 21.12.2021. On violation of the bond, he had involved in the offence on 13.01.2022. The petitioner had previous cases before the execution of the bond, had involved himself in a subsequent case registered in Crime No.10 of 2022 for the offence under Sections 294(b), 324, 506 (ii) of IPC & 4 of TNPWH Act. The second 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 VII Metropolitan Magistrate, George Town, Chennai.

(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 first 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, 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/-

28/03/2022

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 VII METROPOLITAN MAGISTRTE,
GEORGE TOWN, CHENNAI.

2 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI. [FOR INFORMATION]

3 THE EXECUTIVE MAGISTRATE CUM DEPUTY COMMISSIONER,
O/O DEPUTY COMMISSIONER,
FLOWER BAZAAR, CHENNAI.

4 THE INSPECTOR OF POLICE
B-2, ESPLANADE POLICE STATION,
I.,C LAW AND ORDER, CHENNAI 600001.

5 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI.

6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

+1C.C. to M/S P.MUTHAMIZHSELVAKUMAR Advocate on payment of
necessary charges SR.No.4684

Order
in
CRL MP.3107/2022
in
CRL.RC.299/2022
Date :28/03/2022

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

CSK 29/03/2022