



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Cr1.M.P.No.6959 of 2022

in

Cr1.R.C.No.661 of 2022

S.Abinesh

... Revision Petitioner/Petitioner

Versus

1.The State of Tamil Nadu,
Rep. by the Executive Magistrate/
Deputy Commissioner of Police,
Madhavaram District,
Chennai.

2. The State of Tamil Nadu,
Rep. by the Inspector of Police,
M-3, Puzhal Police Station,
Chennai - 600 066.

... Respondent/Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence and compensation imposed by the 1st respondent in passed in M.P.No.1 of 2022 in R.C.No.04/Sec.Pro/DCP MVM/2022 in M3 Puzhal P.S.Si No.05/2022 under Sec 110 of Cr.P.C., on the file of 1st respondent, dated 10.02.2022 under Section 122(1)(b) of Cr.P.C., and enlarge the petitioner on bail.

For Petitioner : Mr.C.K.M.Appaji

For Respondents : Mr.S.Vinoth Kumar
Govt. Advocate (Cr1. Side)



ORDER

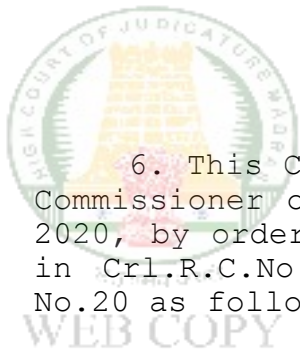
This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of the sentence and compensation imposed by the 1st respondent in passed in M.P.No.1 of 2022 in R.C.No.04/Sec.Pro/DCP MVM/2022 in M3 Puzhal P.S.Si No.05/2022 under Sec 110 of Cr.P.C., on the file of 1st respondent, dated 10.02.2022 under Section 122(1)(b) of Cr.P.C., and release the petitioner on bail pending disposal of the criminal revision petition.

2. Learned Counsel appearing for the petitioner would submit that earlier when the petitioner was in custody, he was forced to execute the bond under Section 110 of Cr.P.C., for keeping good behaviour. Accordingly, on 10.02.2022, the petitioner had executed the bond under Section 110 Cr.P.C. for maintaining good behaviour and thereafter, the petitioner was complying with the bond conditions and did not indulge in any illegal activities. While so, in order to detain the petitioner by invoking Section 122(1)(b) Cr.P.C. under the pretext of violation of bond condition, the petitioner has been falsely implicated in Crime No.286 of 2022 and Crime No.326 of 2022. He would further submit that the 1st respondent had not issued any show cause notice to the petitioner and without giving opportunity to the petitioner to defend his case, the impugned order has been passed. Therefore, the order passed by the 1st respondent is liable to be set aside.

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.Vinoth Kumar, the learned Government Advocate (CrI. Side), would submit that the petitioner had furnished a bond to be of good behaviour on 10.02.2022. On violation of the bond, he had involved in the offences on 03.02.2022 and 29.01.2022. The second respondent, after affording sufficient opportunity, finding violation of the bond, passed the order of detention.

5. Heard the learned counsel for the petitioner 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 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:-

(i) The petitioner shall execute own bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) before the Superintendent, Central Prison, Puzhal, Chennai.

(ii) 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, 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/-

08/06/2022

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 EXECUTIVE MAGISTRATE
DEPUTY COMMISSIONER OF POLICE,
MADHAVARAM DISTRICT CHENNAI.

2 THE INSPECTOR OF POLICE,
M-3 PUZHAL POLICE STATION,
CHENNAI - 600 066.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI

6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S.C.K.M.APPAJI Advocate on payment of necessary
charges SR.NO.8644

Order
in
CRL MP.6959/2022
in
CRL RC.661/2022

Date :08/06/2022

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

JPA 09/06/2022