



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2022

CORAM :

WEB COPY

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.M.P.No.6704 of 2022

in

CrI.R.C.No.639 of 2022

D.Vignesh @ Vicky

... Petitioner/Accused

Versus

1.The Executive Magistrate cum Deputy Commissioner,
St.Thomas Mount, Chennai.

2.The State Represented by
The Inspector of Police (Law & Order)
S-8, Adambakkam Police Station,
Chennai.

... Respondents

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the conviction and sentence order dated 22.04.2022 in u/s.122 (1)(b) of Cr.P.C. in M.P.No.03 of 2022 in Na.Ka.No.85/Sec.Pro/DCP - St.Thomas Mount Dist/2022 in S-8, Adambakkam P.S., S.I.No.93/2021 u/s 110 of Cr.P.C. (on the file of the Executive Magistrate cum Deputy Commissioner of Police, St.Thomas Mount District, Chennai) to undergo Simple Imprisonment of 330 days and enlarge the petitioner on bail till the disposal of the present revision petition.

For Petitioner : Mr.M.Illiyas

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

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/Accused, seeking suspension of sentence of imprisonment, imposed by the Executive Magistrate cum Deputy Commissioner of Police, St.Thomas Mount District, Chennai in M.P.No.03 of 2022 in Na.Ka.No.85/Sec.Pro/DCP - St.Thomas Mount Dist/2022 dated 22.04.2022 and release the petitioner on bail pending disposal of the criminal revision petition.



2. Learned Counsel appearing for the petitioner would submit that the petitioner was summoned by the first respondent on 11.03.2022 and without furnishing any material and without furnishing 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, whereas on 15.04.2022, he was falsely implicated by the second respondent in a case registered in Crime No.193 of 2022, for the offences under Sections 8(c), 22(a) of NDPS Act and under Section 328 of IPC and when he was in judicial custody, a PT warrant was issued by the first respondent on 20.04.2022 and he was produced before the first respondent on 22.04.2022 and without affording sufficient opportunity to defend his case, he has been clamped with the detention order directing him to be in prison for 330 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. Mr.S.Vinoth Kumar, the learned Government Advocate (Crl. Side), would submit that the petitioner had furnished a bond to be of good behaviour on 11.03.2022. On violation of the bond, he had involved in the offence on 15.04.2022. 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/-

07/06/2022

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.



1 THE EXECUTIVE MAGISTRATE CUM
DEPUTY COMMISSIONER, ST. THOMAS MOUNT DISTRICT,
CHENNAI.

2 THE INSPECTOR OF POLICE (LAW AND ORDER),
S-8, ADAMBAKKAM POLICE STATION,
CHENNAI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI

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

C.C. to M/S. M. ILLIYAS Advocate on payment of necessary
charges SR.8610

Order

in
CRL MP.6704/2022

in
CRL RC.639/2022

Date :07/06/2022

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RVR 09/06/2022