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CrI.M.P.No.13648 of 2022 in CrI.R.C.No.1259 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.M.P.No.13648 of 2022
in CrI.R.C.No.1259 of 2022

Raji @ Rajasekar

... Petitioner

Versus

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

2. State rep. By,
The Inspector of Police (Law & Order),
S-9, Palavanthangal Police Station,
Chennai.

... Respondents

Prayer: Criminal Miscellaneous Petition filed under Sections 397 (i) r/w 439 of the Code of Criminal Procedure, pleaded to suspend the conviction and sentence order dated 11.08.2022 in u/s.122(1)(b) of Cr.P.C., in M.P.No.17 of 2022 in Na.Ka.No.316/Sec.Pro/DCP-St.Thomas Mount Dist/2022 in S-9, Palavanthangal Police Station, S.I.No.60/2022 U/s 109 of Cr.P.C., on the file of the Executive Magistrate cum Deputy Commissioner of Police, St.Thomas Mount District, to undergo Simple Imprisonment of 364 days and enlarge the petitioner on bail till the disposal of the above revision petition.



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For Petitioner : Mr.M.Illiyas
For Respondents : Mr.S.Vinoth Kumar
Govt. Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/Accused, seeking to suspend the conviction and sentence order dated 11.08.2022 in u/s.122(1)(b) of Cr.P.C., in M.P.No.17 of 2022 in Na.Ka. No.316/Sec.Pro/DCP-St.Thomas Mount Dist/2022 in S-9, Palavanthangal Police Station, S.I.No.60/2022 U/s 109 of Cr.P.C., on the file of the Executive Magistrate cum Deputy Commissioner of Police, St.Thomas Mount District, to undergo Simple Imprisonment of 364 days and enlarge the petitioner on bail till the disposal of the above revision petition.

2. Mr.M.Illiyas, learned Counsel appearing for the petitioner would submit that in a routine manner, with a view to detain the petitioner, bond is required under Section 110 of the Code of Criminal Procedure and subsequently, the petitioner is implicated in criminal case as if he violated the bond and now, the present order is passed.



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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 differing 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 and in violation of the bond, he had involved in the offence and the respondent, after affording sufficient opportunity, finding violation of the bond, passed the order of detention.



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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 differed 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.

(ii)The petitioner shall appear before the second respondent Police everyday at 5.30 p.m., until further orders.



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9. Hence, the Criminal Miscellaneous Petition is ordered to the extent of granting Suspension of Sentence. The Superintendent, Central Prison, Puzhal 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.

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Index : yes/no

Internet: yes/no

Speaking order/Non-speaking order

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To

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1. The Judicial Magistrate-I,
Alandur.
2. The Superintendent,
Central Prison, Puzhal.
3. The Executive Magistrate cum
Deputy Commissioner,
St.Thomas Mount, Chennai District.
4. The Inspector of Police (Law & Order),
S-9, Palavanthangal Police Station,
Chennai.
5. The Public Prosecutor,
Madras High Court.



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D.BHARATHA CHAKRAVARTHY. J.,

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