



Crl.M.P.No.14064 of 2022 in Crl.R.C.No.1320 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

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THE HONOURABLE **MR.JUSTICE V.SIVAGNANAM**

Crl.M.P.No.14064 of 2022

in

Crl.R.C.No.1320 of 2022

Prabu @ Prabudeva

... Petitioner

/Versus/

1.The Executive Magistrate-cum-
Deputy Commissioner of Police,
St.Thomas Mount District,
Chennai City.

2.State rep.by
The Inspector of Police (Law and Order),
S-7, Madipakkam Police Station,
Chennai-117.

... Respondents

Prayer : Criminal Miscellaneous Petition filed under section 397(1) of Cr.P.C., to suspend the sentence imposed in M.P.No.19 of 2022 in Na.Ka.No.277/Nir.Se.Nadu/Ka.Thu.Aa.Pu.Tho.Ma/2022 vide an order dated 26.08.2022 on the file of the 1st respondent and enlarge the petitioner on bail pending disposal of the above Criminal Revision Case.

For Petitioner

... Mr.S.N.Arunkumar

For Respondents

... Mr.V. Meganathan
Govt. Advocate (Crl.Side)



ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence, imposed by the Executive Magistrate cum Deputy Commissioner of Police, in M.P.No.19 of 2022 in Na.Ka.No.277/Nir.Se.Nadu/Ka.Thu.Aa.Pu.Tho.Ma/2022 dated 26.08.2022 and enlarge the petitioner on bail, pending disposal of the Criminal Revision Case.

2. The learned counsel for the petitioner submitted that the allegation stated in the impugned proceedings is untrue and the petitioner is not involved in any crime. The impugned order has been passed for violation of bond under section 110 of Cr.P.C., which is unsustainable. Now it is under challenge. He would further submit that now the petitioner is detained in prison for violating the the bond executed under Section 110 Cr.P.C., as directed by the Executive Magistrate-cum-Deputy Commissioner of Police, St.Thomas Mount District, Chennai City. Hence he seeks to enlarge the petitioner on bail till the disposal of this revision.

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



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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.V.Meganathan*, the learned Government Advocate (Crl. Side), would submit that the petitioner had furnished a bond to be of good behaviour on 30.06.2022. On violation of the bond, he had involved in the offence on 21.08.2022 and arrested. The 1st 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 grant bail to the petitioner with the following conditions:-

(i) The petitioner shall execute own bond for a sum of Rs.25,000/- (Rupees Twenty Five 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. 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.

23.12.2022

rpl

V.SIVAGNANAM, J.

rpl

To



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1.The Executive Magistrate-cum-
Deputy Commissioner of Police,
St.Thomas Mount District,
Chennai City.

2.The Superintendent,
Central Prison,
Puzhal, Chennai.

3.The Inspector of Police (Law and Order),
S-7, Madipakkam Police Station,
Chennai-117.

4.The Public Prosecutor
High Court, Madras.

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