



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.No.13119 of 2021  
in  
Crl.R.C.No.985 of 2021

Annamalai

... Petitioner

..Vs..

1.The Executive Magistrate cum Deputy Commissioner  
of Police,  
Madhavaram.

2. State Inspector of Police (L&O)  
M-5, Ennore Police Station,  
Chennai-57.

... Respondents

PRAYER: Criminal Miscellaneous Petition filed under Section 397 (1) & 439 of Cr.P.C to suspend the sentence to imposed by the Executive Magistrate cum Deputy Commissioner of Police, Madhavaram in M.P.No.09 of 2021 in R.C.No.208/Sec.PRo/DCP MVM/2021 in M5 Ennore P.S.S1.No.95/2021 u/s.110 of Cr.P.C dated 19.11.2021 enlarge the petitioner on bail and pending disposal of the above revision.

For petitioner : Mr.M.Nithiyavel

For Respondents : Mr.S.Sugendran for R1 and R2  
Government Advocate (Crl. Side)

O R D E R

(This case has been heard through video conferencing)

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, Madhavaram in M.P.No.09 of 2021 in R.C.No.208/Sec.PRo/DCP MVM/2021 in M5 Ennore P.S.S1. No.95/2021 u/s.110 of Cr.P.C dated 19.11.2021 enlarge the petitioner on bail and pending disposal of the above revision.



2. Learned Counsel appearing for the petitioner would submit that the petitioner was summoned by the first respondent on 01.07.2021 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 01.07.2021, whereas on 18.10.2021, he was falsely implicated by the second respondent in case registered in Crime No.886 of 2021, for the offence under Sections 6(a), r/w 24(1) COTPA Act & Sec 77 of the Juvenile Justice care & Protection of Children Act 2015 and when he was in judicial custody, a PT warrant was issued by the first respondent on 13.11.2021 and he was produced before the first respondent on 19.11.2021 and without affording sufficient opportunity to defend his case, he has been clamped with the detention order directing him to be in prison for 223 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.Sugendran, the learned Government Advocate (Crl. Side), would submit that the petitioner had furnished a bond to be of good behaviour on 01.07.2021. On violation of the bond, he had involved in the offence on 18.10.2021. The first respondent, after affording sufficient opportunity, finding violation of the bond, passed the order of detention.

5. Heard the learned counsel 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 is ordered to be released on bail on condition to execute his own bond for a sum of Rs.15,000/- (Rupees Fifteen Thousand only) before the Superintendent of the concerned prison/Jailor concerned, in which the petitioner has been confined and thereafter, on his release, the petitioner shall furnish two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate, Tiruvottiyur within 15 days from the date of commencement of the court's normal functioning, failing which the bail granted by this court shall be dismissed automatically and on further condition that:

(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-I, 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.

WEB COPY

-sd/-  
28/01/2022

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 JUDICIAL MAGISTRATE,  
TIRUVOTTIYUR.

2 THE CHIEF JUDICIAL MAGISTRATE,  
TIRUVALLUR DISTRICT (FOR INFORMATION).

3 EXECUTIVE MAGISTRATE CUM  
DEPUTY COMMISSIONER OF POLICE,  
MADHAVARAM.

4 THE INSPECTOR OF POLICE,  
(LAW AND ORDER), M-5,  
ENNORE POLICE STATION,  
CHENNAI.

5 THE PUBLIC PROSECUTOR,  
HIGH COURT, MADRAS.



6 THE SUPERINTENDENT,  
CENTRAL PRISON, PUZHAL-I.

WEB COPY

C.C. to M/S.M.NITHIYAVEL Advocate on payment of necessary charges

Order

in  
CRL MP.13119/2021  
in  
CRL.R.C.985/2021

Date :28/01/2022

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

INBA~28/01/2022