



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.No.14049 of 2021

in

Crl.R.C.No.1098 of 2021

Karthick

... Petitioner

Vs.

1.The Executive Magistrate cum Deputy Commissioner of Police,
Mylapore District,
Chennai - 04.

2.The Inspector of Police,
E-4, Abiramapuram Police Station,
Law & Order,
Chennai-28.

3.The Superintendent,
Puzhal-II,
Chennai.

... Respondents

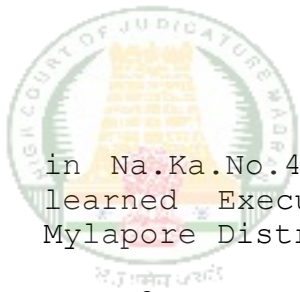
PRAYER: The Criminal Miscellaneous Petition is filed under Section 389 (1) of the Code of Criminal Procedure, pleaded to suspend the sentence imposed on him in impugned order passed by the first respondent dated 21.10.2021, by his proceedings in M.P.No.10 of 2021 on the file of the Executive Magistrate cum Deputy Commissioner of Police, Mylapore District, Chennai - 04 in Na.Ka.No.48/ Neer.Se.Nadu / Ka.Thu./Mylapore District 2021 in E-4, Abiramapuram Police Station 107 Ku.Vi.Mu.Sa.Va No.04/2021 U/s.122(1-b) Cr.P.C for the period of 175 days, ordering to detain the petitioner for violation of the bond executed by the detinue for one year, to the value of Rs.10,000/- with 2 sureties on 02.03.2021.

For Petitioner : Mr.B.Gopalakrishanan

For Respondents : Mr.S.Sugendran
Government Advocate (Crl.Side)

O R D E R

This Criminal Miscellaneous Petition has been filed by the petitioner/Accused, seeking suspension of sentence of imprisonment, imposed against the petitioner in M.P.No.10 of 2021 dated 21.10.2021



in Na.Ka.No.48/ Neer.Se.Nadu /Ka.Thu./Mylapore District 2021 by the learned Executive Magistrate cum Deputy Commissioner of Police, Mylapore District, Chennai - 04.

2. Learned Counsel appearing for the petitioner would submit that the petitioner was summoned by the first respondent on 02.03.2021 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 107 Cr.P.C on 02.03.2021, whereas on 04.09.2021, he was falsely implicated by the second respondent in a case registered in Crime No.759 of 2021, for the offence under Section 302 IPC and when he was in judicial custody, a PT warrant was issued by the first respondent on 12.10.2021 and he was produced before the first respondent on 18.10.2021 and without affording sufficient opportunity to defend his case, he has been clamped with the detention order directing him to be in prison for 175 days.

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.Sugendran, the learned Government Advocate (CrI. Side), would submit that the petitioner had furnished a bond to be of good behaviour on 02.03.2021. On violation of the bond, he had involved in the offence on 04.09.2021. 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 CrI.R.C.No.78 of 2020, by order dated 25.09.2020, had deferred with the findings given in CrI.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:-

(a) Accordingly, 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 Prison/Jailor concerned, in which the Petitioner has been confined and thereafter, on his release, the petitioner shall execute two sureties, each for a like sum to the satisfaction of the learned XXIII Metropolitan Magistrate, Saidapet within 15 days from the date of commencement of the Court's normal functioning, failing which the bail granted by this Court shall stand dismissed automatically and on further conditions that:

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c)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-II, 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.

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24/01/2022

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 EXECUTIVE MAGISTRATE - CUM -
DEPUTY COMMISSIONER OF POLICE,
MYLAPORE DISTRICT, CHENNAI - 04.

2 THE INSPECTOR OF POLICE,
E-4, ABIRAMAPURAM POLICE STATION,
LAW AND ORDER, CHENNAI - 28.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI - II,
CHENNAI.

4 THE XXIII METROPOLITAN MAGISTRATE,
SAIDAPET, CHENNAI.

5 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI (FOR INFORMATION).

6 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.



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

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

Order

in
CRL MP.14049/2021

in
CRL.R.C.1098/2021

Date :24/01/2022

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

INBA~24/01/2022