



Crl.M.P.No.18886 of 2022 in Crl.RC.No.1560 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.18886 of 2022

in

Crl.RC.No.1560 of 2022

Radhakrishnan

... Petitioner

/Versus/

1.The Sub Divisional Magistrate and Sub Collector,
Hosur, Krishnagiri District.

2.The Inspector of Police,
Hosur Town Police Station,
Krishnagiri District

.. Respondents

Prayer : Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the sentence imposed on the petitioner herein by the Sub Divisional Magistrate and Sub Collector, Hosur in M.C.No.271 of 2022/B1 dated 28.11.2022 and enlarge the petitioner on bail, pending disposal of the above Criminal Revision petition.

For Petitioner ... Mr. M.P.Saravanan

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 Sub Divisional Magistrate



and Sub Collector, Hosur in M.C.No.271 of 2022/B1 dated 28.11.2022 and enlarge the petitioner on bail, pending disposal of the Criminal Revision Case.

2. Learned Counsel appearing for the petitioner would submit that the petitioner was summoned by the first respondent to appear for hearing on 28.11.2022 and on that day without furnishing opportunity to the petitioner and without furnishing any material, he was compelled to furnish security for his good behaviour and accordingly, he had executed a bond under Section 110 Cr.P.C, whereas, on 18.11.2022, the petitioner was arrested by the second respondent police based on the complaint given by the defacto complainant in Crime No.529 of 2022, for the offences under Sections 294(b), 323, and 506(ii) of IPC r/w Section 4 of TNPWH Act, 2002. He further submitted that after filing compromise memo by the defacto complainant, who is the wife of the petitioner, the learned Magistrate has granted bail to the petitioner on 24.11.2022 and after obtaining the bail, the petitioner was inside the jail for more than 8 days. In the meanwhile, he was produced before the first respondent on 28.11.2022 and without affording sufficient opportunity to defend his case, he has been clamped with the detention order directing him to be in prison till 06.06.2023.



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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 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 07.06.2022. On violation of the bond, he had involved in the offence on 18.11.2022 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, Salem.

(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, Salem is directed to set the petitioner at liberty, if his further detention is no longer required in connection with any other case or proceedings.



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V.SIVAGNANAM, J.

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10. The Criminal Miscellaneous Petition is ordered accordingly.

15.12.2022

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Note : Issue Order copy on 16.12.2022

To

1.The Sub Divisional Magistrate and Sub Collector,
Hosur, Krishnagiri District.

2.The Superintendent,
Central Prison,
Salem.

3.The Inspector of Police,
Hosur Town Police Station,
Krishnagiri District.

4.The Public Prosecutor
High Court, Madras.

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