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Crl.M.P.No.19091 of 2022 in Crl.R.C.No.1593 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2022

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THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**

Crl.M.P.No.19091 of 2022 in
Crl.R.C.No.1593 of 2022

Sethuraman,
S/o.Murali

... Petitioner

Vs.

1.The Executive Magistrate-cum-
Deputy Commissioner,
Washermenpet District.

2.The State Represented by
The Inspector of Police (Law & Order),
H-8, Thiruvottiyur Police Station,
Chennai.

... Respondents

PRAYER: Criminal Miscellaneous Petition filed under Sections 397(1) & 439 of the Code of Criminal Procedure, to suspend the conviction and sentence order dated 08.08.2022 under Section 122(1)(b) of Cr.P.C. in M.P.No.40 of 2022 in M.C.No.473/Sec. Pro/DCP WPT/2022 in H-8, Thiruvotriyur Police Station, LIR No.116/2022 under Section 110 of Cr.P.C. (on the file of the Executive Magistrate-cum-Deputy Commissioner of Police, Washermenpet District) to undergo Simple Imprisonment of 328 days and enlarge the petitioner on bail till the disposal of above revision petition.

For Petitioner : Mr.A.Venkateswara Babu

For Respondents : Mr.V.Meganathan
Government Advocate (Crl. Side)



ORDER

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This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the 1st respondent in M.P.No.40 of 2022, dated 08.08.2022.

2.The petitioner has been detained for violation of bond under Section 110 Cr.P.C., for which the 1st respondent passed a detention order under Section 122(1)(a) Cr.P.C., in M.P.No.40 of 2022, dated 08.08.2022.

3.The learned counsel for the petitioner submitted that the petitioner executed a bond under Section 110 Cr.P.C on 02.07.2022. Thereafter, the petitioner violated the bond and committed an offence and a case was registered against him in Crime No.453 of 2022 for offence under Section 8(c), 20(b)(ii)(B), 25 of NDPS Act on 30.07.2022 and he was arrested on 30.07.2022. Thereafter, the 1st respondent passed an order under Section 122(1)(b) of Cr.P.C. against the petitioner for violation of Section 110 Cr.P.C. in M.P.No.40 of 2022 in M.C.No.473/Sec. Pro/DCP WPT/2022 in H-8, Thiruvotriyur P.S., LIR No.116/2022 u/s. 110 of Cr.P.C. and detained the petitioner on 08.08.2022.



4. The primary contention of the petitioner is that the entire proceedings under Section 122(1)(b) of Cr.P.C. is stage mannered one. The conditions stipulated were not followed. The petitioner was not given proper opportunity to defend his case, he was not furnished with the documents and materials. Further, he had not engaged any advocate, namely, Jagan to defend him. On 03.08.2022, the petitioner was produced under P.T. warrant. On 05.08.2022 all the three witnesses, namely, P.W.1/Kadharmeera, Inspector of Police (L & O), H-8, Thiruvotriyur Police Station, P.W.2/Krishnaraj, Inspector of Police, H-6, R.K.Nagar Police Station and P.W.3/Praveen Kumar, Sub Inspector of Police, H-6, R.K.Nagar Police Station were examined. The petitioner was not given opportunity to cross examine them. On the other hand, in the impugned order it has been recorded as though the petitioner had cross examined and some of the question and answers have been extracted. He further submitted that in the impugned order it is mentioned that the petitioner was questioned under Section 313 Cr.P.C. But, on the same day the petitioner was given only two hours time, which is in gross violation of the procedure. This would clearly shows that the petitioner has been falsely implicated in this case and the entire proceedings is only an eyewash. The learned counsel further submitted that the Hon'ble Supreme Court had held that the Magistrate to give a legal



assistance and also inform the concern about the reason of the proceedings and the rights available to him. In this Case, no such exercise have been done.

The detention of the petitioner cannot be done as a matter of routine, since it affects the fundamental rights of the petitioner.

5. The learned Government Advocate (Crl. Side) appearing for the respondents objected to the same and submitted that the petitioner had engaged an Advocate by name Jagan. He shall produce the necessary appearance details and credentials of the said Jagan, Advocate, who defended the petitioner before the Executive Magistrate-cum-Deputy Commissioner. It is further submitted that as per Section 122(1)(b) of Cr.P.C., the order was passed by the 1st respondent. Further, as per Section 122(3) Cr.P.C., 1st respondent after examining the report received from the 2nd respondent and on further information or evidence, if he thinks necessary, giving concerned person a reasonable opportunity of being heard and thereafter, only the order has to be passed. In this case, all procedures were followed. Added to it, from the records, it is seen that a show cause notice issued to the petitioner under Section 111 Cr.P.C. Therefore, the other points raised by the petitioner are to be decided in the revision.



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6. This Court considered the submissions made on either side and perused the materials available on record.

7. The consistent view of this Court is that for violation of bond executed under Section 110 Cr.P.C., for good behaviour, Section 122(1)(b) cannot be invoked, which has been clearly dealt by this Court in several cases viz., “*Malar @ Malarkodi Versus the Sub-Divisional Magistrate cum Revenue Divisional Officer, Udayarpalayam Taluk, Perambalur District in Crl.R.C.No.1791 of 2002*”, “*Karthigayan @ Pallukarthik Versus The Sub-Divisional Magistrate cum Revenue Divisional Officer, Thanjavur reported in 2015 SCC OnLine Mad 2417*” and “*Balamurugan Versus State and Ors. reported in MANU/TN/2058/2016.*”

8. This Court in the case of “*Vadivel @ Mettai Vadivel Versus The State in Crl.R.C.982 of 2012, dated 24.11.2018*” disposed a batch of revision cases, wherein referred to the said earlier judgments and took a contra view and observed that Section 122(1)(b) Cr.P.C., would attract Section 110 Cr.P.C and requested the Registry of this Court, to place the matter before the Hon'ble



The Chief Justice, to constitute a larger bench, to decide the issue as framed in paragraph No.19 and the same is extracted hereunder:-

“As regards the execution of bond for good behaviour under Section 108 and 109 Cr.P.C., the framers of law could not have intended the Sections, to loosely hang in the statutory hanger, as execution of bond entails enforcement of the same. May be it was an accidental omission, which can be supplemented by purposive interpretation of the statutory scheme as a whole. From the scheme of the Chapter under consideration, this Court could safely infer that there was no intentional omission by the Parliament to render the said provision impotent or ineffective and in such situation, the Courts can play a supplementary role in giving effect to otherwise the intention of the framers so as to give force and life to the intention of the legislature, as expressed by Lord Denning, J.

9. Though the learned Single Judge deferred, he held that the notice has to be given to the detenu as well, to be heard before order is passed against him under Section 122(1)(b) Cr.P.C. These exercises to be done by after reasonable application of mind.

10. The other learned Single Judge of 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, 1859 (Central Act XXIV of 1859)?”

11. 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., with Section 110



Cr.P.C. and for other connected issues.

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12. As far as this case is concerned, the petitioner is in prison for the past four months i.e. from 08.08.2022 onwards. Finding that the petitioner has made out a *prima-facie* case and also it would take some time for the above issues to be decided, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone with the following conditions:-

(a) The petitioner is ordered to be released on bail, on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Thiruvottiyur, Chennai;

(b) The petitioner and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall report before the concerned respondent Police daily at 10.30 a.m., until further orders.

13. Accordingly, this Criminal Miscellaneous Petition is ordered. The



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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.

14. The learned counsel for the petitioner is directed to file an affidavit on the submissions made before this Court with regard to non engagement of Mr.Jagan, Advocate and no advocate defended the petitioner.

19.12.2022
(2/2)

Index: Yes/No
Internet: Yes/No
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Note: Issue order copy on 21.12.2022
To

- 1.The Executive Magistrate-cum-
Deputy Commissioner,
Washermenpet District.
- 2.The Inspector of Police (Law & Order),
H-8, Thiruvottiyur Police Station,
Chennai.

M.NIRMAL KUMAR, J.

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

4.The Public Prosecutor,
High Court, Madras.

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(2/2)