



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.289 of 2022

and

Crl.M.P(MD)No.3780 of 2022

WEB COPY

Thirumurugan @ Atha Thirumurugan,
S/o.Marimuthu,
Door No.25, Thiruvananthapillai Street,
Ayyanpappakudi,
Avaniyapuram,
Madurai - 625 012.

(Now confined at Central
Prison, Madurai).

... Revision Petitioner

Vs.

1.The Executive Magistrate cum
Deputy Commissioner of Police,
Madurai South,
Madurai City. ... 1st Respondent

2.The Inspector of Police,
V2, Avaniyapuram Police Station,
Avaniyapuram,
Madurai City. ... 2nd Respondents / complainant

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records and set aside the order of detention passed in M.C.No.1149/பி.செ.ந & கா.து.ஆ/ம.மா/2021 on the file of the Executive Magistrate cum Deputy Commissioner of Police, Madurai South, Madurai City, dated 19.01.2022 and allow the Criminal Revision Petition.

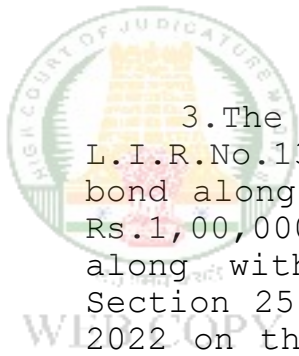
For Petitioner : Mr.K.Vadivelan

For Respondents : Ms.M.Aasha
Government Advocate (Criminal Side)

ORDER

This revision has been filed as against the order passed by first respondent, dated 19.01.2022, thereby ordered the petitioner to be detained for the remaining bond period.

2.Heard the learned counsel appearing on either side and perused the materials available on record.



3.The petitioner executed a bond under Section 110 of Cr.P.C in L.I.R.No.138 of 2021. On 18.09.2021, the petitioner executed the bond along with two sureties for a period of one year for a sum of Rs.1,00,000/-. While being so, again on 05.01.2022, the petitioner along with other accused persons have committed offence under Section 25(1)(a) of Arms Act and 506(ii) of I.P.C in Crime No.17 of 2022 on the file of the second respondent. In pursuant to the said agreement, he was arrested and remanded to judicial custody. In this regard, the second respondent had sent a detailed report before the first respondent and on receipt of the same, the first respondent issued show cause notice to the petitioner why he should be initiated proceedings under Section 122(1)(b) of Cr.P.C., on his appearance and after giving opportunity of hearing to him. The prosecution witnesses were examined and passed the impugned order thereby detained the petitioner for the remaining bond period.

4.The only point for consideration in this case is that when the petitioner executed bond under Section 110 of Cr.P.C., the first respondent can initiate proceedings under Section 122(1)(b) of Cr.P.C.

5.It is relevant to rely upon the judgment of this Court in the case of ***Devi Vs. The Executive Magistrate and one another in Crl.R.C.No.78 of 2020, dated 25.09.2020***, this Court has held as follows:-

"36.Unlike the expression "breach of the peace", where "subjectivity" is the basis, good behaviour rests on "objectivity". All the clauses of Section 110 Cr.P.C., except clause (g), underpin the existence of a previous case. In fact, they use the expression "habit / habitual" which is conspicuously missing in clause (g). Such a requirement is not there under Section 107 Cr.P.C. Section 110(e) Cr.P.C. which contemplates offences committed habitually involving breach of the peace cannot be used as a window to enter into Section 122(1)(b) Cr.P.C., for the simple reason that, Section 122 (1) (b) Cr.P.C. is predicated on the nature of the bond, viz., bond for breach of the peace and not on clause (e) of Section 110 Cr.P.C. Thus, textually and contextually, a bond for good behaviour can, by no stretch of imagination, be telescoped into Section 122(1)(b) Cr.P.C.

37. In Anoop Singh Vs. State of Punjab, a learned Single judge of the Punjab and Haryana High Court has held that imprisonment under Section 122(1)(b) Cr.P.C., was not contemplated for the breach of a good behaviour bond under Section 110 Cr.P.C.

38. There is yet another reason as to why the Parliament did not include breach of a good behaviour



bond in Section 122(1) (b) Cr.P.C., Section 120 Cr.P.C., states what amounts to breach of a bond. It states that commission or attempt to commit or the abetment of any offence punishable with imprisonment, would amount to breach of a bond for good behaviour. This means that the person will have to face a regular trial in a criminal Court for the act which gave rise to the breach of the bond for good behaviour. If a good behaviour bond is included in Section 122(1) (b) Cr.P.C., there is every likelihood of the person being imprisoned twice, viz., one for breach of the bond and the other for the commission or the attempt to commit the substantive offence. Supposing such a person is imprisoned for the breach of bond, but is acquitted for the criminal act which gave rise to the breach of bond, the imprisonment suffered by him cannot be compensated. That is why, the Legislature had thought it fit to mulct a person who commits breach of good behaviour bond only with civil liability, viz., forfeiture of the bond amount and not imprisonment."

In the aforesaid judgment, this Court has held that the bond for good behavior can by no stretch of imagination be telescoped into Section 122(1) (b) of Cr.P.C.

6. In view of the above referred judgment, the first respondent failed to follow the procedure as enumerated by this Court and as such the impugned order cannot be sustained as against the petitioner. Accordingly, this criminal revision case is allowed and the order passed by the first respondent in M.C.No.1149/பெ.பெ. & கா.து.ஆ/ம.மா/2021, dated 19.01.2022 is set aside and the petitioner is directed to be released forthwith, unless his presence is required in any other case. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The Executive Magistrate cum
Deputy Commissioner of Police,
Madurai South,
Madurai City.

2.The Inspector of Police,
V2, Avaniyapuram Police Station,
Avaniyapuram,
Madurai City.

3.The superintendent Central Prison,
Madurai.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K. VADIVELAN, Advocate (SR-16967[F] dated 06/04/2022)

Order made in
Crl.R.C (MD) No.289 of 2022
06.04.2022

am (CO)
TR (07.04.2022) 4P 6C