



Crl.R.C.(MD) No.958 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.R.C.(MD)No.958 of 2022

Silambarasi

...Petitioner/Detenu

Vs.

1.The II-Class Executive Magistrate/The Tahsildar,
Uthamapalayam,
Theni District.

2.The Inspector of Police,
Cumbum South Police Station,
Cumbum,
Theni District.

3.The Superintendent,
Special Prison for Women,
Madurai.

... Respondents/Complainant

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to the order dated 05.08.2022 passed by the first respondent/II Class Executive Magistrate/The Tahsildar, Uthamapalayam, Theni District, in Na.Ka.No.7965/2022/A8 and set aside the same as illegal.



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For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.S.Manikandan
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed to call for the records pertaining to the order dated 05.08.2022 passed by the first respondent/II Class Executive Magistrate/The Tahsildar, Uthamapalayam, Theni District, in Na.Ka.No.7965/2022/A8 and set aside the same as illegal.

2.The petitioner was issued with a notice by the 1st respondent under Section 109 Cr.P.C. to show cause as to why she should not execute a bond for keeping the peace for a period of one year with a bond for a sum of Rs.50,000/-. Following which on 30.05.2022 the petitioner is said to have appeared before the 1st respondent and executed such bond for a sum of Rs.50,000/- with surety. In such a situation on 24.07.2022 a case was registered against the petitioner by the Inspector of Police, Gudalor Police Station, Theni District in Crime No.197 of 2022 for the offence punishable under Sections 8 (C) and 20(b)(ii)(B) of NDPS Act. In connection with the above said case, a summon was issued to the petitioner under Section 117 of Cr.P.C., Following which, the petitioner was



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produced before the 1st respondent and on inquiry the 1st respondent passed the impugned order in Na.Ka.No.7965/2022/A8 dated 05.08.2022, whereby, the petitioner was ordered to be detained in prison till 29.05.2023 under Section 122(1)(b) of Cr.P.C. for breaching the bond executed by the petitioner under Section 109 of Cr.P.C. Aggrieved over the same the present criminal revision is filed before this Court.

3.The learned Government Advocate(Crl.Side) appearing for the respondent submitted that the procedure has been followed properly. According to the learned Government Advocate(Crl.Side), statement of witnesses has been recorded. Since she is a habitual offender under law and order case, this impugned order came to be passed.

4.The learned counsel for the petitioner submitted that the first respondent has not given any notice to the petitioner. Even though subsequent happenings are there, the procedure has not been properly followed. For that purpose, the learned counsel for the petitioner relied upon a decision of this Court in ***P.Sathish @ Sathish Kumar Vs. State represented by the Inspector of Police***, reported in **2019 (2) MWN (Cr.) 136** and the relevant passages are extracted herein.



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“1.Notice to be sent to the person by the Executive Magistrate to show cause as to why action under Section 122(1)(b) of Cr.P.C should not be taken for breach of the bond executed under Section 117 Cr.P.C on a date fixed.

2.At the enquiry, the Executive Magistrate should furnish the person the materials sought to be relied upon, including statements of witnesses, if any, in the vernacular (if the person is not knowing the language other than his mother tongue).

3.If the person wishes to engage an Advocate to represent him at the enquiry, an opportunity to have a counsel of his choice should be provided to him.

4.The Executive Magistrate shall inform the person about his right to have the assistance of a lawyer for defending him in the enquiry.

5.The enquiry shall be conducted by the Executive Magistrate on the notified date or such other date as may be fixed and the person should be allowed to participate in the same.



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6.At the enquiry, an opportunity should be given to the person to : (i) Cross-examine the official witnesses, if any and (ii) produce documents and witnesses, if any, in support of his case.

7.Such Executive Magistrate or his successor in office, should then, apply his mind on the materials available on record, in the enquiry, and pass speaking order.

8.An order under Section 122(1)(b) of Cr.P.C should contain the grounds upon which the Executive Magistrate is satisfied that the person has breached the bond.

9.A copy of the order should be furnished to the person along with the materials produced at the enquiry.

10.The enquiry, as far as possible shall be completed within 30 days and at no circumstances, the enquiry shall be adjourned unnecessarily. The advocates, who appear on behalf of the persons concerned, are expected to co-operate with the enquiry process for its expeditious completion.”

5.In view of the above, this petition is liable to be allowed and accordingly, **allowed** and the order passed by the Second Class Executive Magistrate/the



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Tahsildar, Uthamapalayam, Theni District in Na.Ka.No.7965/2022/A8, dated 05.08.2022, is hereby set aside. However, liberty is granted to the respondents herein to initiate fresh action, if so required, by following the procedure that has been set out in the above said Judgment. He may be set at liberty if not needed in any other case.

30.09.2022

Index : Yes/No
Internet : Yes/No
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To:-

- 1.The II-Class Executive Magistrate/The Tahsildar,
Uthamapalayam,
Theni District.
- 2.The Inspector of Police,
Cumbum South Police Station,
Cumbum,
Theni District.
- 3.The Superintendent,
Special Prison for Women,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVA,N,J

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ORDER MADE IN
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