



Crl.RC(MD)No.1039 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Crl.RC(MD)No.1039 of 2022

Sundarraaj

...Petitioner

Vs.

1.The II Class Executive Magistrate/
the Tashildar, Nilakottai,
Dindigul District.

2.The Inspector of Police,
Vathalakundu Police Station,
Vathalakundu,
Dindigul District.

3.The Superintendent,
District Jail,
Dindigul,
Dindigul District.

... Respondents

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C. praying to call for the records pertaining to the order dated 01.10.2022 passed by the 1st respondent/II Class Executive Magistrate/ the Tahsildar, Nilakkottai, Dindigul District, in Na.Ka.No.7541/2022/A5 and set aside the same as illegal.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.S.Manikandan

Govt. Advocate (crl.side)



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ORDER

This Criminal Revision Case has been filed against the order passed by the respondent in Na.Ka.No.7541/2022/A5, dated 01.10.2022.

2.The petitioner was issued with a notice by the 1st respondent under Section 107 Cr.P.C. to show cause as to why he should not execute a bond for keeping the peace for a period of six months with a bond for a sum of Rs.10,000/-. Following which, on 15.06.2022, the petitioner is said to have appeared before the 1st respondent and executed bond. In such a situation on 12.09.2022 a case was registered against the petitioner by 2nd respondent police in Crime No.157 of 2022 for the offence punishable under Section 8 (C) r/w Section 20(b)(ii)(B) of NDPS Act. Hence, the first respondent passed the impugned order in Na.Ka.No.7541/2022/A5, dated 01.10.2022, whereby, the petitioner was ordered to be detained in prison under Section 122(1)(b) of Cr.P.C. for breaching the bond executed by the petitioner under Section 110 of Cr.P.C. Aggrieved over the same the present criminal revision is filed before this Court.



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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), the petitioner was enquired by the first respondent. During the course of enquiry, he himself admitted the charges framed against him. Based on the admission made by the petitioner and the records available with the respondent police, the first respondent has passed the above order.

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.

“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,



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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.

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



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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 Revision is liable to be allowed and accordingly, the Civil Revision Case is **allowed** and the order passed by the 1st respondent/II Class Executive Magistrate/The Tahsildar, Nilakottai, Dindigul District, Na.Ka.No.7541/2022/A5 dated 01.10.2022, is hereby set aside. The petitioner/accused shall be released forthwith for his presence is not required in any other case. Further, liberty is granted to the first respondent herein to initiate fresh action, if so required, by following the procedure that has been set out in the above said Judgment.

02.11.2022

Internet:Yes

Index:Yes/No

Speaking/Non speaking order

skn

Note : Issue Order Copy on 17.11.2022



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To

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the Tashildar, Nilakottai,
Dindigul District.
- 2.The Inspector of Police,
Vathalakundu Police Station,
Vathalakundu,
Dindigul District.
- 3.The Superintendent,
District Jail,
Dindigul,
Dindigul District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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A.A.NAKKIRAN, J.

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