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Crl.M.P.No.2376 of 2023 in Crl.RC.No.287 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.2376 of 2023

in

Crl.R.C.No.287 of 2023

Thiru. Usman Sheriff

... Petitioner

/vs/

1. The State, represented by  
the Inspector of Police,  
B-1, Town Police Station,  
Salem City.
2. S.P.Lavanya, M.B.A.,  
Executive Magistrate and  
Deputy Commissioner of Police  
(South), Salem City.

.. Respondents

**Prayer :** Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the sentence of the petitioner pursuant to the order dated 08.12.2022 made in Crl.A.No.91 of 2022 on the file of the 1<sup>st</sup> Additional District and Sessions Judge, Salem by confirming the order of the Executive Magistrate and Deputy Commissioner of Police (South) at Salem City (CNR.No.TNSA010056362022), dated 08.10.2022 made in M.C.No.146/EM & DCP(s)/SLM(c) 2022 passed under section 122(1)(b) r/w.117 Cr.P.C., and enlarge the petitioner on bail.



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For petitioner

... Mr.C.Sivanesan

For Respondent

... Mr.V. Meganathan, GA (crl.side)-R1

### **ORDER**

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence of the petitioner pursuant to the order dated 08.12.2022 made in Crl.A.No.91 of 2022 on the file of the 1<sup>st</sup> Additional District and Sessions Judge, Salem, by confirming the order of the Executive Magistrate and Deputy Commissioner of Police (South) at Salem City (CNR.No.TNSA010056362022), dated 08.10.2022 made in M.C.No.146/EM & DCP(s)/SLM(c) 2022 passed under section 122(1)(b) r/w.117 Cr.P.C., and enlarge the petitioner on bail, till the disposal of the above Criminal Revision Petition.

2. By the impugned proceedings dated 08.10.2022, the first respondent remanded the petitioner to judicial custody for violation of bond executed by him on 02.08.2022 u/s.110 of Cr.P.C., for keeping good behaviour for one year and ordered him to undergo imprisonment till 01.08.2023 being the remaining period of the period mentioned in the bond viz., 9 months 25 days. Against the order passed by the 1<sup>st</sup> respondent, the petitioner preferred AN



appeal in C.A.No.91 of 2022 before the Principal District and Sessions Judge of Salem, who by order dated 08.12.2022, confirmed the order passed by the 2nd respondent. Aggrieved over such dismissal, the petitioner has preferred the present Crl.R.C., along with instant miscellaneous petition seeking suspension of sentence imposed on the petitioner till the disposal of the criminal revision petition.

3. The learned counsel for the petitioner submitted that the allegation stated in the impugned proceedings is untrue and the petitioner is not involved in any crime. The impugned order has been passed for violation of bond under section 110 of Cr.P.C., as directed by the 2<sup>nd</sup> respondent which is unsustainable. Now it is under challenge. He would further submit that now the petitioner is detained in prison for violating the bond executed under Section 110 Cr.P.C., as directed by the 1<sup>st</sup> respondent . Hence he seeks to enlarge the petitioner on bail till the disposal of this revision.

4. When the matter was taken up, the learned Government Advocate (Crl.Side) appearing for the respondents objected to release the petitioner on bail.



5. I have considered the submissions made on both side and perused the materials available on record.

6. The Executive Magistrate and Deputy Commissioner of Police (South), Salem City, on the complaint by the 1<sup>st</sup> respondent police, conducted enquiry and thereafter passed the impugned order which is now under challenge.

7. At this juncture, it is relevant to note that a Division Bench was constituted by the Honourable Chief Justice of this Court to deal with the case regarding applicability of Section 122(1)(b) Cr.P.C.

8. In view of the above, since the issues to be decided by the Division Bench of this Court would take some time, this Court is inclined to grant bail to the petitioner till the disposal of the Criminal Revision on the following conditions.

9. Accordingly, the petitioner is ordered to be released on bail on 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 affix his photograph and Left Thumb Impression in the bond and the Superintendent, Central Prison, Salem may obtain a copy of his Aadhaar card or Bank pass Book to ensure his identity; and;

(iii)The petitioner shall appear before the second respondent Police everyday at 5.30 p.m., until further orders.

10. 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.

11. The Criminal Miscellaneous Petition is ordered accordingly.

20.02.2023

msr



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**V.SIVAGNANAM, J.**

msr

To

1. The Executive Magistrate and Deputy Commissioner of Police (South),  
Salem City,
2. The Superintendent, Central Prison, Salem.
3. The Inspector of Police,  
B-1, Town Police Station,  
Salem City
4. The Public Prosecutor, High Court, Madras.

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