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Crl.O.P.No.8139 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.8139 of 2023

Vinoth

... Petitioner

Vs.

1. State Rep by

The Executive Magistrate

Cum Deputy Commissioner of Police,

T.Nagar District.

2. The Inspector of Police,

R11, Ramapuram Police Station,

Ramapuram, Chennai 600 089.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records and set aside the order passed in Crl.R.C.No.31 of 2022 (on the III Additional District and Sessions Judge at Poonamallee) dated 03.02.2023, confirming the order of conviction passed by 1st respondent in M.P.No.01 of 2022 (on the file of the 1st respondent) dated 14.09.2022.



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For Petitioner : Mr.Arvind Adityan
for Mr.M.Che Castro

For Respondents : Mr.Leonard Arul Joseph Selvam
Government Advocate(Crl.Side)

ORDER

By order dated 14.09.2022, the petitioner was detained by the 1st respondent for violation of a bond executed by him under Section 107 Cr.P.C. He was directed to undergo detention for a period of 1 (one) year. The III learned Additional District and Sessions Judge, Poonamallee has confirmed the order of detention imposed on the petitioner by the 1st respondent in Crl.R.C.No.31 of 2022, by order dated 03.02.2023. The petitioner had challenged the said order before this Court.

2. The learned counsel for the petitioner would submit that the the impugned order is unsustainable, in view of the judgment of the Division Bench of this Court dated **13.03.2023** in **Cr.R.C.No.137 of 2018 batch cases**. Therefore, he seeks to set aside the impugned order passed by the 1st respondent.



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3. The learned Government Advocate (Crl.Side) appearing for the respondents fairly conceded that the 1st respondent is not competent authority to pass an order under Section 122(1)(b) Cr.P.C.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondents and perused the materials available on record.

5.The impugned order passed by the first respondent dated 14.09.2022 cannot be sustained in view of the order of the Division Bench of this Court dated **13.03.2023** in **Cr.R.C.No.137 of 2018 batch cases**, wherein, this Court had held as follows:-

*“80 (e) In the light of the law laid down in paragraph 24 of the three judge bench decision of the Supreme Court in **Gulam Abbas Vs State of Uttar Pradesh** (1982) 1 SCC 71, an Executive Magistrate cannot authorize imprisonment under Section 123(1)(b) for violation of a bond*



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under Section 107 Cr.P.C. A person who has violated the bond executed before the Executive Magistrate under the said provision will have to be challenged or prosecuted before the Judicial Magistrate for inquiry and punishment under Section 122(1)(b)Cr.P.C”

6. Therefore, the impugned order dated 14.09.2022 passed by the 1st respondent as confirmed by the order dated 03.02.2023 passed by the learned III Additional District and Sessions Judge, Poonamallee is set aside. Accordingly, the Criminal Original Petition is allowed. The Superintendent of Prison, Central Prison, Puzhal, Chennai is directed to release the petitioner forthwith, if his detention is no longer required in any other case. Consequently, connected miscellaneous petition is closed.

13.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
srn/dk



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Note : Issue order copy today(13.04.2023)

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To

1. The III Additional District and Sessions Judge, Poonamallee
2. The Executive Magistrate
Cum Deputy Commissioner of Police, T.Nagar District.
- 3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.
4. The Inspector of Police,
R11, Ramapuram Police Station,
Ramapuram, Chennai 600 089.
5. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN. J,

srn/dk

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