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CrL.R.C.No.736 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.R.C.NO.736 OF 2023

Ranganathan

... Petitioner

Vs.

1.The Executive Magistrate cum
Deputy Commissioner of Police (South)
Coimbatore.

2.State Rep. By the Special Sub – Inspector
Prohibition Enforcement Wing
Coimbatore City.
(Crime No.198/2023)

3.The Superintendent of Prison
Central Prison, Coimbatore.

... Respondents

PRAYER: Criminal Revision Case filed under Section 397(1) r/w 401 of Criminal Procedure Code to call for the records and set aside the order dated 22.02.2023 passed under Section 122(1)(b) Cr.P.C., vide M.C.No.05/2023 by the first respondent viz., the Executive Magistrate cum Deputy Commissioner of Police (South) Coimbatore sentencing him to undergo imprisonment for a period of 342 days i.e., till 29.01.2024 and release him from prison.

For Petitioner	...	Mr.T.R.Sivaram
For Respondents	...	Mr.R.Vinothraja
		Government Advocate (Crl.Side)



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ORDER

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Challenging the order dated 22.02.2023 passed under Section 122(1)(b) Cr.P.C., in M.C.No.05/2023 by the first respondent viz., the Executive Magistrate cum Deputy Commissioner of Police (South) Coimbatore, sentencing the petitioner to undergo imprisonment for a period of 342 days i.e., till 29.01.2024 and for a direction to release him from prison, the petitioner is before this Court.

2.The learned counsel for the petitioner would submit that the first respondent passed an order dated 22.02.2023 under Section 122(1)(b) Cr.P.C., in M.C.No.05/2023 pursuant to the case in Crime No.198/2023 registered under Sections 4(1)(a) and 4(1)(i) of TNP Act on the file of second respondent police and remanded the petitioner till 29.01.2024. He would further submit that the petitioner had moved an bail application in CrI.M.P.No.1063 of 2023 before the District Munsif cum Judicial Magistrate Court, Madukarai and by order dated 15.03.2023, he was granted bail. Despite being granted bail and after having executed sureties as per the above order, the petitioner is still confined at Central Prison, Coimbatore. The impugned order is unsustainable, in view of the order of



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the Division Bench of this Court in ***P.SATHISH @ SATHISH KUMAR***

AND OTHERS VS. THE STATE REP. BY THE INSPECTOR OF

POLICE AND OTHERS [CRL.R.C. NO.137 OF 2018 AND ETC.,

BATCH CASES, DECIDED ON 13.03.2023]. Therefore, he seeks to set

aside the impugned order passed by the first respondent.

3.The learned Government Advocate (Criminal Side) appearing for the respondents fairly conceded that the first respondent is not the competent authority to pass an order under Section 122(1)(b) Cr.P.C. and the petitioner is confined at Central Prison, Coimbatore.

4.I have considered the matter in the light of submissions of the learned counsel for the petitioner and the respondents.

5.On perusal of the records and the impugned order, it reveals that the first respondent in pursuance of the complaint given by the second respondent, the Special Sub-Inspector of Police, Prohibition Enforcement Wing, Coimbatore City, has proceeded to initiate proceedings against the petitioner and directed to execute the bond with two sureties.



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Since the petitioner has violated the bond executed before the Executive Magistrate, the first respondent proceeded against him further under Section 122(1)(b) Cr.P.C and finally ordered to remand him till 29.01.2024. The impugned order dated 22.02.2023 passed by the first respondent in M.P.No.05 of 2023 under Section 122(1)(b) Cr.P.C, is unsustainable, in view of the order of the Division Bench of this Court in ***P.SATHISH @ SATHISH KUMAR CASE (cited supra)*** wherein, in paragraph 80 (e), this Court, relied on a judgment of the Hon'ble Supreme Court in ***GULAM ABBAS VS STATE OF UTTAR PRADESH*** [1982) 1 SCC 71] has 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 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”*



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6.In the light of the above, this Court is of the considered view that the first respondent is not the competent authority to impose any punishment under Section 122(1)(b) Cr.P.C. Therefore, the impugned order passed by the first respondent is set aside and the Criminal Revision is allowed. The third respondent is directed to release the petitioner forthwith, unless his presence is required in connection with any other case.

24.04.2023

Internet : Yes/No

Note : Issue order copy on 25.04.2023

TK

To

- 1.The Executive Magistrate cum
Deputy Commissioner of Police (South)
Coimbatore.
- 2.The Special Sub – Inspector
Prohibition Enforcement Wing
Coimbatore City.
- 3.The Superintendent of Prison
Central Prison
Coimbatore.
- 4.The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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V.SIVAGNANAM, J.

TK

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