



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Fifteenth day of March Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.3861 of 2023
in
CRL RC(MD) No.268 of 2023

KANNAN @ MALAIKANNAN ...PETITIONER/DETENU
(NOW CONFINING AT RAMANATHAPURAM DISTRICT JAIL)

Vs

1 THE SECOND CLASS EXECUTIVE MAGISTRATE
AND TAHSILDAR, OFFICE OF THE EXECUTIVE MAGISTRATE
AND DEPUTY COMMISSIONER,
MUDUKULATHUR,
RAMANATHAPURAM DISTRICT.

2 THE INSPECTOR OF POLICE
PERAYUR POLICE STATION,
RAMANATHAPURAM DISTRICT.

3 THE SUPERINTENDENT OF PRISON
RAMANATHAPURAM DISTRICT JAIL,
RAMANATHAPURAM DISTRICT.

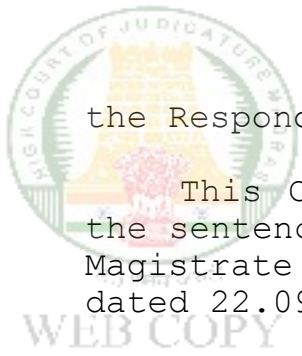
... RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence passed by the respondent no.1 in M.C.No.254 of 2022 dated 22.09.2022 and release the petitioner by name Kannan @ Malikannan now confining at Ramanathapuram District Jail, Ramanathapuram District, pending disposal of this Criminal Revision in the interest of justice.

Prayer in CRL RC(MD). 268/ 2023 :

To call for the records connected with the order passed by the respondent no.1 in M.C.No.254 of 2022 dated 22.09.2022 and set aside the same as illegal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.ALAGUMANI.R, Advocate for the petitioner and of M/S.M.G. Gov. ADVAN, Government Advocate (Criminal Side) on behalf of



the Respondents, the court made the following order:-

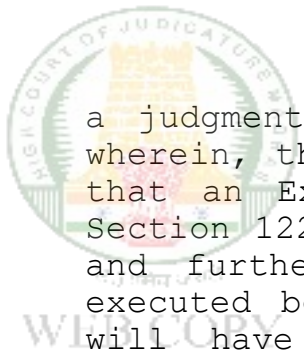
This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the Second Class Executive Magistrate and Tahsildar, Ramanathapuram, in M.C.No.254 of 2022, dated 22.09.2022, till the disposal of this Criminal Revision.

2. The first respondent, on the basis of the report of the second respondent, has issued a show cause notice to the petitioner and conducted enquiry and ordered the petitioner to execute a bond under Section 107 Cr.P.C., on the same day itself and on that basis, the petitioner has been bound over and released, after executing a bond, for maintaining good behaviour for a period of one year viz., from 25.08.2022 to 24.08.2023. Subsequently, a criminal case was registered against the petitioner in Crime No.216 of 2022, for the offences punishable under Sections 8(c) r/w 20(b)(ii)(B) of the NDPS Act, and the petitioner was arrested on 05.09.2022 and remanded to judicial custody on the same day. The second respondent, by alleging that the petitioner violated/breached the bond executed by him, has sent a communication, requesting the first respondent to initiate necessary action under Section 122(1)(b) r/w 117 Cr.P.C. Based on the said report of the second respondent, the first respondent issued a show cause notice to the petitioner and directed them to produce the petitioner on 19.09.2022 and thereafter on 22.09.2022. The first respondent after enquiry, has passed the impugned order, dated 22.09.2022, cancelling the security bond executed by the petitioner and ordered to detain him in prison until the expiry of the period of bond viz., 24.08.2023. Aggrieved by the said order, the petitioner has preferred the present revision along with the present miscellaneous petition seeking suspension of sentence.

3. The learned counsel appearing for the petitioner would submit that the impugned order has been passed without following the procedure laid down by this Court, that the first respondent has not conducted proper enquiry as prescribed in the law, that the petitioner's right to get legal assistance was denied, that no opportunity was given to the petitioner to get the documents, that the first respondent has failed to supply all the documents mentioned in the impugned order, that the learned Magistrate has no power to invoke Section 122(1)(b) r/w 117 Cr.P.C for the violation of the bond executed under Section 107 Cr.P.C and that the personal liberty of the petitioner was seriously affected by the impugned order passed by the first respondent.

4. The learned Government Advocate (Criminal Side) appearing for the respondents would submit that the petitioner is a habitual offender.

5. The learned counsel appearing for the petitioner would submit that the Division Bench of this Court has pronounced



a judgment dated 13.03.2023 in Crl.R.C.(MD)No.137 of 2011, wherein, the Division Bench of this Court has specifically observed that an Executive Magistrate cannot authorize imprisonment under Section 122(1)(b) for violation of a bond under Section 107 Cr.P.C. and further observed that a person who has violated the bond executed before the Executive Magistrate under the said provision will have to be challaned or prosecuted before the Judicial Magistrate for enquiry and punishment under Section 122(1)(b) Cr.P.C.

6. Considering the above, this Court is of the view that the petitioner herein is entitled to the relief of suspension of sentence.

7. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the Judicial Magistrate No.II, Ramanathapuram;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the concerned officer may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and

(iii) The petitioner shall appear before the first respondent as and when required.

sd/-

15/03/2023

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

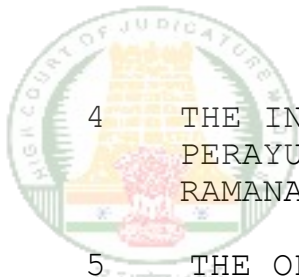
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TO

1 THE JUDICIAL MAGISTRATE NO.II
RAMANATHAPURAM.

2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.

3 THE SECOND CLASS EXECUTIVE MAGISTRATE
AND TAHSILDAR, OFFICE OF THE
EXECUTIVE MAGISTRATE AND DEPUTY COMMISSIONER,
MUDUKULATHUR, RAMANATHAPURAM DISTRICT.



4 THE INSPECTOR OF POLICE
PERAYUR POLICE STATION,
RAMANATHAPURAM DISTRICT.

5 THE OFFICER INCHARGE
RAMANATHAPURAM DISTRICT JAIL,
RAMANATHAPURAM DISTRICT.

6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.3861 of 2023
in
CRL RC (MD) No.268 of 2023
Date :15/03/2023

PKP/MMS/SAR- /15.03.2023/ **4P/7C**