



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

Thursday, the Thirtieth day of March Two Thousand and Twenty Three
PRESENT

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The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.5225 of 2023
in
Crl.R.C.(MD)No.361 of 2023

SHANMUGASUNDARAM

... PETITIONER/PETITIONER

Vs

1 THE EXECUTIVE MAGISTRATE/
DEPUTY COMMISSIONER OF POLICE (NORTH),
MADURAI CITY, MADURAI

2 THE INSPECTOR OF POLICE
D-3 KODALPUDUR POLICE STATION,
KODALPUDUR,
MADURAI CITY.

3 THE SUPERINTENDENT OF PRISON
CENTRAL PRISON, MADURAI,
MADURAI DISTRICT.

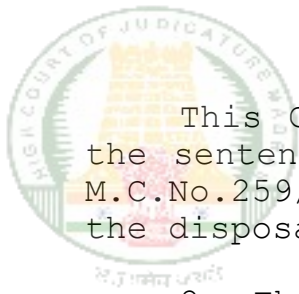
... RESPONDENTS/RESPONDENTNTS

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 1st respondent / the Executive Magistrate / Deputy Commissioner of Police (North) Madurai city in M.C No. 259/Ni.Se.Na and Ka.Thu.Aa/Ma.Maa/2022 dated 08.02.2023 and release the detenu by name Shanmugasundaram, aged about 42 years, S/o.Murugaiyan, now confined at the Central Prison, Madurai pending disposal of this Criminal Revision Petition.

PRAYER IN Crl.R.C.(MD)No.361 of 2023:

To call for the records pertaining to the order dated 08.02.2023 passed by the 1st respondent/the Executive Magistrate / Deputy Commissioner of Police (North) Madurai city in M.C No. 259/Ni.Se.Na and Ka.Thu.Aa/Ma.Maa/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.PRAGALATHAN N, Advocate for the petitioner and of M/S.ALBERT JAMES, Government Advocate on behalf of the Respondents, the court made the following order:-



This Criminal Miscellaneous Petition has been filed to set aside the sentence imposed on the petitioner by the first respondent, in M.C.No.259/Ni.Se.Na&Ka.Thu.Aa/Ma.Maa/2022, dated 08.02.2023, till the disposal of this Criminal Revision.

2. The first respondent, on the basis of the report of the second respondent, has initiated proceedings under Section 110 Cr.P.C., in LIR.No.58 of 2022 and conducted enquiry and ordered the petitioner to execute a bond under Section 110 Cr.P.C. on 23.09.2022 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 23.09.2022 to 22.09.2023. Subsequently, a criminal case was registered against the petitioner in Crime No.13 of 2023, for the offences punishable under Sections 8(c) r/w 20(b) (ii)(B) and 25 of NDPS Act, and the petitioner was arrested on 21.01.2023 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 Sections 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 01.02.2023, 02.02.2023 and 08.02.2023. The first respondent after enquiry, has passed the impugned order, dated 08.02.2023, cancelling the security bond executed by the petitioner and ordered to detain him in prison until the expiry of the period of bond viz., 22.09.2023. 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 petitioner has no way connected with the alleged occurrence in Crime No.13 of 2023, that the impugned order has been passed without following the procedure laid down by this Court, 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 Sections 122(1) (b) r/w 117 Cr.P.C for the violation of the bond executed under Section 110 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 counsel appearing for the petitioner would further submit that the Division Bench of this Court has pronounced a judgment dated 13.03.2023 in Crl.R.C.(MD)No.137 of 2018 Batch, 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



Magistrate for enquiry and punishment under Section Cr.P.C.)

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

6. 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 learned 1st Additional District Judge, Special Court for NDPS Act Cases, Madurai;

(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/-
30/03/2023

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30/03/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM

TO

1. THE 1ST ADDITIONAL DISTRICT JUDGE,
SPECIAL COURT FOR NDPS ACT CASES, MADURAI.

2 THE EXECUTIVE MAGISTRATE/
DEPUTY COMMISSIONER OF POLICE (NORTH),
MADURAI CITY, MADURAI

3 THE INSPECTOR OF POLICE
D-3 KOODALPUDUR POLICE STATION,
KOODALPUDUR, MADURAI CITY.

4 THE SUPERINTENDENT OF PRISON
CENTRAL PRISON, MADURAI, MADURAI DISTRICT.

<https://www.mca.gov.in> 5. THE ADDITIONAL PUBLIC PROSECUTOR,



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Crl.M.P(MD)



23

MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s..PRAGALATHAN N, Advocate (SR-5162[I] dated
30/03/2023)

ORDER

IN

Crl.M.P (MD) No.5225 of 2023

in

Cr1.R.C. (MD) No.361 of 2023

Date :30/03/2023

RK/MMS/SAR- (30/03/2023) 4P/7C