



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

Friday, the Twenty Eighth day of April Two Thousand and Twenty Three

PRESENT

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The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.7123 of 2023
in
CRL RC(MD)No.483 of 2023

NIVAS

... PETITIONER/PETITIONER

Vs

1 THE SUB DIVISIONAL MAGISTRATE/
REVENUE DIVISIONAL OFFICER,
OFFICE OF THE REVENUE DIVISIONAL OFFICER,
KULITHALAI, KARUR DISTRICT.

2 THE INSPECTOR OF POLICE
LALAPPETTAI POLICE STATION,
KARUR DISTRICT.

3 THE SUPERINTENDENT OF PRISON
CENTRAL PRISON, TIRUCHIRAPPALLI DISTRICT. ... RESPONDENTS/RESPONDENTS

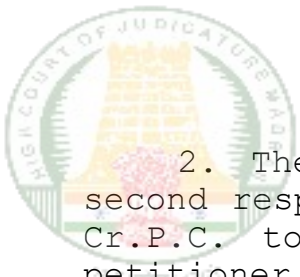
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentences passed order in Na.Ka.A3/5281/2022 (MC No.64/2020) dt 05.08.2022 on the file of the R1 pending disposal of the above said Criminal Revision.

Prayer in CRL RC(MD). 483/ 2023 :

To call for the records connected with the order passed by the R1 in Na.Ka.A3/5281/2022(M.C.No.64/2020) order dt 05.08.2022 against the petitioner namely Nivas S/o.Gandhi Male age 22 years who is detained at central prison, Trichy 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.KARUNAKARAN.K.M, Advocate for the petitioner and of Mr.SS.MADHAVAN, Government Advocate(Crl.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 Sub Divisional Magistrate/Revenue Divisional Officer, Kulithalai, Karur District, in Na.Ka.A3/5281/2022 (M.C.No.64/2020), dated 05.08.2022, till the disposal of this Criminal Revision.



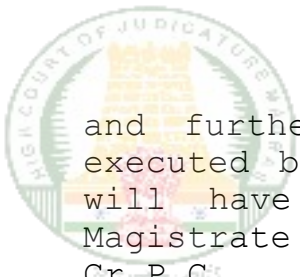
2. The first respondent, on the basis of the report of the second respondent, has issued a show cause notice under Section 110 Cr.P.C. to the petitioner and conducted enquiry and ordered the petitioner to execute a bond under Section 107 Cr.P.C., on the same day itself and on that basis, the petitioner has been bound over and released, after executing a bond, for maintaining good behaviour for a period of three years viz., from 24.12.2020 to 23.12.2023. Subsequently, a criminal case was registered against the petitioner in Crime No.265 of 2022, for the offences punishable under Sections 341, 387 and 506(2) IPC, and the petitioner was arrested on 05.06.2023 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 Section 122(1) (b). 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 05.08.2023. The first respondent after enquiry, has passed the impugned order, dated 05.08.2023, cancelling the security bond executed by the petitioner and ordered to detain him in prison until the expiry of the period of bond viz., 23.12.2023. 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) 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 the habitual offender and seven criminal cases are pending against him as of now.

5. No doubt, the first respondent in the impugned order has listed out seven cases pending against the petitioner on the file of the Lalapettai Police Station, Karur District.

6. 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 CrI.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 said 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.

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

8. 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.I, Kulithalai;

(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/-

28/04/2023

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28/04/2023

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

DAS

TO

- 1 THE SUB DIVISIONAL MAGISTRATE/
REVENUE DIVISIONAL OFFICER,
OFFICE OF THE REVENUE DIVISIONAL OFFICER,
KULITHALAI, KARUR DISTRICT.
- 2 THE JUDICIAL MAGISTRATE NO.I,
KULITHALAI.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KARUR DISTRICT.
- 4 THE INSPECTOR OF POLICE
LALAPPETTAI POLICE STATION,
KARUR DISTRICT.



5 THE SUPERINTENDENT OF PRISON
CENTRAL PRISON, TIRUCHIRAPPALLI DISTRICT.

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

+1 CC to M/s.KARUNAKARAN.K.M, Advocate (SR-6938[I] dated 28/04/2023
)

ORDER
IN
CRL MP (MD) No.7123 of 2023
in
CRL RC (MD) No.483 of 2023
Date :28/04/2023

SS/MMS/SAR /28/04/2023/4P/8C