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

Monday, the Tenth day of April Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.5724 of 2023
in
CRL RC(MD) No.339 of 2023

SATHAM HUSSAIN @ CYLINDER

... PETITIONER/PETITIONER

Vs

1 THE I CLASS SUB DIVISIONAL
EXECUTIVE MAGISTRATE/THE REVENUE DIVISIONAL OFFICER,
TIRUCHENDUR, THOOTHUKUDI DISTRICT.

2 THE INSPECTOR OF POLICE
ARUMUGANERI POLICE STATION, ARUMUGANERI,
THOOTHUKUDI DISTRICT.

3 THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON,
PALAYAMKOTTAI,
TIRUNELVELI 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 detention passed by R1/I Class Sub Divisional Executive Magistrate/the Revenue Divisional Officer, Tiruchendur, Thoothukudi District, in MC No.541/2022 dt.23/12/2022 and release the detenu by name Satham Hussain @ Cylinder, aged about 31 years, S/o.Abdul Rasak, now confined at the Central Prison, Palayamkottai and enlarge the petitioner bail pending disposal of this Criminal Revision Petition.

Prayer in CRL RC(MD). 339/ 2023 :

To call for the records pertaining to the order dated 23.12.2022 passed by the 1st respondent I Class Sub Divisional Executive Magistrate the Revenue Divisional Officer, Tiruchendur, Thoothukudi District in M.C.No.541 of 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 Mr.A.ALBERT JAMES, Government Advocate(Crl.side) on behalf of the Respondents, the Court made the following order:-



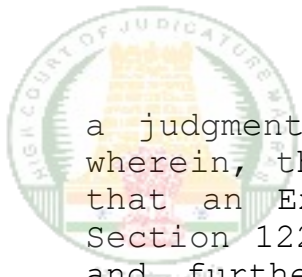
This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the I- Class Sub-Divisional Executive Magistrate/Revenue Divisional Officer, Tiruchendur, Thoothukudi District, in M.C.No.541 of 2022, dated 23.12.2022, till the disposal of this Criminal Revision.

2. The first respondent, on the basis of the report of the second respondent, has issued a show cause notice under Section 113 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 one year viz., from 25.07.2022 to 24.07.2023. Subsequently, a criminal case was registered against the petitioner in Crime No.13 of 2022, for the offences punishable under Sections 417, 506(i) IPC and Section 6 of POCSO Act and the petitioner was arrested on 02.12.2022 and remanded to judicial custody. 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 13.12.2022. The first respondent after enquiry, has passed the impugned order, dated 23.12.2022, cancelling the security bond executed by the petitioner and ordered to detain him in prison until the expiry of the period of bond viz., 24.07.2023. 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 the habitual offender.

5. 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 2013, 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 challenged 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 Special Court for Exclusive Trial of cases under POCSO Act, Tirunelveli.

(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/-

10/04/2023

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11/04/2023

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

TO

- 1 THE JUDGE, SPECIAL COURT
FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
TIRUNELVELI.
- 2 THE I CLASS SUB DIVISIONAL EXECUTIVE
MAGISTRATE/THE REVENUE DIVISIONAL OFFICER,
TIRUCHENDUR, THOOTHUKUDI DISTRICT.
- 3 THE INSPECTOR OF POLICE
ARUMUGANERI POLICE STATION, ARUMUGANERI,
THOOTHUKUDI DISTRICT.



4 THE SUPERINTENDENT,
CENTRAL PRISON,
PALAYAMKOTTAI, TIRUNELVELI DISTRICT.

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

ORDER
IN
CRL MP (MD) No.5724 of 2023
in
CRL RC (MD) No.339 of 2023
Date :10/04/2023

SS/SSS/SAR /11/04/2023/4P/6C