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CRL MP(MD)



23

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

Friday, the Twenty First day of April Two Thousand and Twenty Three  
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR  
CRL MP(MD) No.6582 of 2023  
in  
CRL RC(MD) No.417 of 2023

M.MADHUKUMAR

... Petitioner / Accused

Vs

1 THE SECOND CLASS EXECUTIVE MAGISTRATE CUM TAHSILDAR,  
ATHOOR DIVISION,  
DINDIGUL DISTRICT.

2 THE STATE REP BY  
THE INSPECTOR OF POLICE  
PATTIVERANPATTI POLICE STATION,  
DINDIGUL 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 in M.C No. 98/2022/Aa3 dated 01.02.2023 on the file of the 1st respondent and enlarge the petitioner on bail pending disposal of the above appeal.

Prayer in CRL RC(MD). 417/ 2023 :

To call for the records pertaining to the order passed in MC No.98/2022/Aa3 dated 01.02.2023 on the file of the 1st respondent and set aside the same.

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.KARUPPASAMY PANDIYAN.G, Advocate for the petitioner and of Mr.R.SIVAKUMAR, 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 first respondent, in M.C.No.98/2022/Aa3, dated 01.02.2023, 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.31 of 2022 and conducted enquiry and ordered the petitioner to execute a bond under Section 110 Cr.P.C. on 17.11.2022 and on that basis, the petitioner has been bound over and released, after executing a bond, for maintaining good behaviour for a period of six months viz., from 17.11.2022 to 16.05.2023. Subsequently, a



criminal case was registered against the petitioner in Crime No. 9 of 2023, for the offences punishable under Sections 8(c), 20(b)(ii)(B), 25 and 29(1) of NDPS Act and the petitioner was arrested on 14.01.2023 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 Section 122(1)(b) 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. The first respondent after enquiry, has passed the impugned order, dated 01.02.2023, cancelling the security bond executed by the petitioner and ordered to detain him in prison until the expiry of the period of bond viz., 16.05.2023. 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.9 of 2023, that the impugned order has been passed without following the procedure laid down by this Court, that the petitioner's right to get legal assistance was denied, 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 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 will have to be challenged or prosecuted before the Judicial Magistrate for enquiry and punishment under Section 122(1)(b) 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 Judicial Magistrate, Nilakottai;



(ii) The sureties shall affix their photograph: 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/-  
21/04/2023

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21/04/2023  
Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

VSM

To

1.The Judicial Magistrate,  
Nilakottai.

2.Do through the Chief Judicial Magistrate,  
Dindigul District.

3.The Second Class Executive Magistrate cum Tahsildar,  
Athoor Division,  
Dindigul District.

4.The Inspector of Police,  
Pattiveeranpatti Police Station,

5.The Officer Incharge,  
District Jail,  
Dindigul.

6.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.KARUPPASAMY PANDIYAN.G, Advocate ( SR-6305[I] dated  
21/04/2023 )

ORDER  
IN  
CRL MP(MD) No.6582 of 2023  
in  
CRL RC(MD) No.417 of 2023  
Date :21/04/2023

ED/SSS/SAR- (21/04/2023) 3P 8C

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