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CrI.R.C.No.1689 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1689 of 2023
and CrI.M.P.No.16081 of 2023

Vicky @ Vignesh

... Petitioner

Vs.

1.The State rep. by
The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Madurantakam Taluk,
Chengalpet District.

2.The Inspector of Police,
G-1 Madurantakam Police Station,
Chengalpet District.

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the conviction order imposed against the petitioner namely Vicky @ Vignesh, M/A 29 years S/o.Kamaraj in Na.Ka.No.1579/2023/A in M.C.No.23 of 2023 dated 05.09.2023 and revise the conviction period imposed till 26.03.2024 on the file of the first respondent.



Crl.R.C.No.1689 of 2023

For Petitioner : Mr.V.Bhagiradhan

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)

ORDER

Challenging the order passed by the first respondent under Section 122(1)(b) Cr.P.C. in Na.Ka.No.1579/2023/A in M.C.No.23 of 2023 dated 05.09.2023, the present revision petition is filed.

2.The grounds assailed by the petitioner is that the order passed by the first respondent is erroneous, not maintainable in law and against the settled position of law. The learned counsel for the petitioner relied upon the law laid down by the Apex Court in the case of ***Gulam Abbas vs. state of Uttar Pradesh*** reported in ***[1982] 1 SCC 71*** and he also placed reliance on the decision of this Court in the case of ***Devi vs. Executive Magistrate*** reported in ***[2020] 6 CTC 157***. The learned counsel further referred to the order of the Division Bench of this Court in the case of ***P.Sathish @ Sathish Kumar vs. The Inspector of Police, Law and Order, H-4***



Korukkupet Police Station, Chennai and another in Crl.RC.No.137 of

2018 batch dated 13.03.2023 and submitted that the Executive Magistrate cannot authorize imprisonment under Section 122(1)(b) Cr.P.c. for violation of a bond under Section 107 Cr.P.C. and 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 inquiry and punishment under Section 122(1)(b) Cr.P.C. Following the order of the Division Bench, the learned Single Judge of this Court has set aside the proceedings of the Executive Magistrate in ***Crl.RC.No.268 of 2023 dated 20.06.2023 [Kozhi Raja @ Raja vs. The Executive Magistrate and Deputy Commissioner of Police, North, Coimbatore City, Coimbatore]***. Hence, he prayed for setting aside the order passed by the Executive Magistrate.

3.The Government Advocate (Crl. Side) appearing for the respondent submitted that the petitioner is a habitual offender who was causing disturbance to the public and also to the traffic. Hence, proceedings has been initiated under Section 110 Cr.P.C., he was produced before the first respondent on the same day and the first respondent obtained a bond from



the petitioner for good behaviour for one year. Thereafter, on 27.03.2023 at about 07.00 hours, the Sub-Inspector of Police received a secret information, entered the same in the General Diary, got permission from the higher officials and went along with police team to the place of occurrence, i.e., Arungunam Lake near thorny bush, where they found the petitioner along with other accused in possession of 1.150 kgs of ganja. The petitioner and other accused persons were arrested, case was registered against the accused persons in Crime No.414/2023 for the offence under Section 7(c), 20(b)(ii)(B) and 29(1) of NDPS Act and the petitioner was produced before the first respondent. Since the petitioner has violated the condition, enquiry conducted by the second respondent and an order was passed by the first respondent under Section 122(1)(b) Cr.P.C. keeping the petitioner under confinement till 26.03.2024.

4.He further submitted that Special Leave Petition was filed before the Hon'ble Supreme Court against the order of the Division Bench in Crl.RC.No.137 of 2018 batch in Crl.A.No.682 of 2024 [SLP(Crl.) No.012075/2023]. The SLP was admitted and notice ordered, but no stay



granted.

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5.Considering the submissions made and on perusal of the materials available on record, it is seen that the Division Bench of this Court in Crl.RC.No.137 of 2018 batch dated 13.03.2023, in paragraph No.88(e) has held as follows:

*88.(e) In the light of the law laid down in paragraph 24 of the three judge bench decision of the Supreme Court in **Gulam Abbas v State of Uttar Pradesh (1982) 1 SCC 71**, an Executive Magistrate cannot authorize imprisonment under Section 122(1)(b) for violation of a bond under Section 107 Cr.P.C. 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 inquiry and punishment under Section 122(1)(b) Cr.P.C.*

6.It is seen that the first respondent directed the petitioner to be in confinement till 26.03.2024. In any event, in view of the order of the Division Bench of this Court in Crl.RC.No.137 of 2018 batch dated



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13.03.2023, the first respondent cannot authorize imprisonment under

Section 122(1)(b) Cr.P.C for violation of bond under Section 110 Cr.P.C.

Accordingly, this Criminal Revision Case is allowed and the impugned order dated 05.09.2023 passed by the first respondent in Na.Ka.No.1579/2023/A in M.C.No.23 of 2023 is set aside. The petitioner is directed to be released forthwith, if he is not required in any other case. Consequently, connected miscellaneous petition is closed.

01.03.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

- 1.The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Madurantakam Taluk,
Chengalpet District.
- 2.The Inspector of Police,
G-1 Madurantakam Police Station,
Chengalpet District.
- 3.The Superintendent,
Central Prison, Puzhal,
Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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