



CRL MP(MD) NO.6178 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED: 30-04-2025

CORAM
THE HONOURABLE MR JUSTICE K.MURALI SHANKAR

CRL MP(MD) NO.6178 of 2025
in CRL RC(MD) NO.556 of 2025

Koolu @ Kalidoss

Petitioner

Vs

1.The Tahsildar and
Executive Magistrate,
Avudaiyarkovil Taluk,
Pudukottai District.

2.The Inspector of Police,
Avudaiyarkovil Police Station,
Pudukottai District.

Respondents

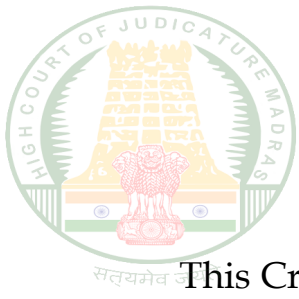
For Petitioner: Mr.T.Lenin Kumar, Advocate

For Respondents: Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)

Prayer in CRL MP(MD).6178 of 2025

This Criminal Miscellaneous Petition filed under Section 528 B.N.S.S. praying to to suspend the order in M.C.No.02/2025/A9 dated 28.03.2025 on the file of the first respondent and release the petitioner forthwith from the Central Prison, Trichy pending disposal of the main criminal revision petition.

Prayer in CRL RC(MD).556 of 2025



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This Criminal Revision Case filed under Section 438 r/w 442 B.N.S.S. to call for the records pertaining to the order of the first respondent passed in M.C.No.02/2025/A9 dated 28.03.2025 and set aside the same.

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the first respondent, in M.C.No.02/2025/A9 dated 28.03.2025, till the disposal of the above revision.

2. The first respondent, on the basis of the report of the second respondent, has initiated proceedings under Section 129 B.N.S.S. (110 Cr.P.C.) and conducted enquiry and ordered the petitioner to execute a bond on 24.01.2025 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 24.01.2025 to 24.07.2025. Subsequently, a criminal case was registered against the petitioner in Crime No.34 of 2025 for the offences under Sections 296(b), 115(2), 118(1) and 351(3) B.N.S. and the petitioner was arrested on 24.03.2025 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. 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. The first respondent, after enquiry, has



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passed the impugned order, dated 28.03.2025, cancelling the security bond executed by the petitioner and ordered to detain him in prison until the expiry of the period of bond viz., 24.07.2025. Aggrieved by the said order, the petitioner has preferred the present revision.

3. The learned counsel appearing for the petitioner would submit that the petitioner has in no way connected with the alleged occurrence in Crime No.34 of 2025, 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 141 (1)(b) B.N.S.S. (122(1) (b) Cr.P.C.) for the violation of the bond executed under Section 129 B.N.S.S. (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 Government Advocate (Criminal Side) appearing for the respondent would submit that the petitioner has been continuously and frequently involving in various criminal activities and caused various problem against the public peace and tranquillity, that during the pendency of the bond period, the petitioner was involved in an offence for which, FIR came to be registered in Crime No.34 of 2025, for the offences punishable under Sections 296(b), 115(2), 118(1) and 351(3) B.N.S., that since the petitioner has violated the bond, at the instance of the



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second respondent, the first respondent has initiated the proceedings, that the first respondent after conducting proper enquiry has passed the order on 28.03.2025, cancelling the security bond and ordered to detain him till the expiry of the bond period, that the petitioner is the habitual offender and that the petitioner is having 8 previous cases.

5. The learned counsel appearing for the petitioner would rely on a decision of the Hon'ble Division Bench of this Court passed in CrI.R.C.No.137 of 2018 batch of cases, dated 13.03.2023. A reference was made to the Hon'ble Division Bench to resolve the conflict between the decisions in Vadivel @ Mettai Vadivel Vs. The State (CrI.R.C.No.982 of 2018 etc., batch) and in Balamurugan Vs. State (2016 SCC Online Mad 23460) on the one hand and that of the decision in Devi Vs. Executive Magistrate (2020 6 CTC 157) on the other hand and the Hon'ble Division Bench, after elaborate discussion, has concluded thus;

“88. Now that we have ousted the camel and put the canopy of justice back to where it belongs, our answers to the questions formulated in paragraph 2 are as under:

(a) GO.Ms.No.659, dated 12.09.2013 and GO.Ms.No.181, dated 20.02.2014 vesting Deputy Commissioners of Police with the powers of an Executive Magistrate for the purposes of Section 107 to 110



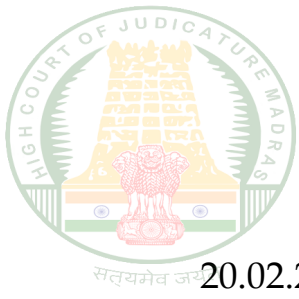
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Cr.P.C, suffer from manifest arbitrariness and violates the principle of separation of powers under the Constitution. The GO's are consequently violative of Articles 14, 21 and 50 of the Constitution of India and the proviso to Section 6 of the Madras District Police Act. Resultantly, we declare GO.MS.No.659, dated 12.09.2013 and GO.MS.No.181, dated 20.02.2014 as unconstitutional and ultra vires the aforesaid provisions. Consequently, the status quo ante that prevailed prior to the issuance of GO.MS.No.659, dated 12.09.2013 and GO.MS.No.181, dated 20.02.2014 stands restored forthwith.

(b) Ex-consequenti, the decision in Balamurugan v State, 2016 SCC Online Mad 23460, will stand overruled.

(c) Violation of a bond executed under Section 110 of the Cr.P.C., can be dealt with under Section 446 of the Code and not under Section 122(1)(b) of the Cr.P.C. Consequently, we affirm the judgment of Mr. Justice P.N Prakash in Devi v Executive Magistrate (2020 6 CTC 157) in its entirety. The decision of the learned single judge to the contrary in Vadivel @ Mettai Vadivel v The State (Crl.R.C.No. 982 of 2018 etc., batch) will stand overruled.

(d) GO.Ms.No.659, dated 12.09.2013 and GO.Ms.No.181, dated



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20.02.2014 were issued only in exercise of powers under Section 20(1) of the Cr.P.C, and these Government Orders have been held to be unconstitutional. And ;

(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. The Hon'ble Division Bench has specifically observed that an 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 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.

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



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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 District Munsif cum Judicial Magistrate, Avudaiyarkovil;
- (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/-
30/04/2025

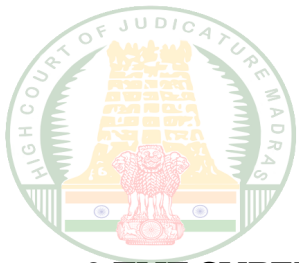
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30 /04/2025
Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM

TO

1. THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
AVUDAIYARKOVIL.
2. THE CHIEF JUDICIAL MAGISTRATE, PUDUKOTTAI.



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3.THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

4.THE TAHSILDAR AND
EXECUTIVE MAGISTRATE,
AVUDAIYARKOVIL TALUK,
PUDUKOTTAI DISTRICT.

5.THE INSPECTOR OF POLICE,
AVUDAIYARKOVIL POLICE STATION,
PUDUKOTTAI DISTRICT.

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

+1. C.C. to T.LENINKUMAR Advocate SR.No.5134 (I) DT.30/04/2025

ORDER
IN
CRL MP(MD) No.6178 of 2025
IN
CRL RC(MD) No.556 of 2025
Date :30/04/2025

PR/30.04 .2025 8P/8C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023