

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD  
(Special Original Jurisdiction)**

FRIDAY, THE SEVENTH DAY OF JULY  
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HON'BLE SRI JUSTICE C.V. BHASKAR REDDY**

**WRIT PETITION NO.40802 OF 2022**

**Between:**

Daravath Vaalya, S/o. Bikya, Aged about 45 Years, Occ. Coolie, R/o. H.No. 74-74, S.T. Thanda, Narlapur Village, S.S.Tadvai Mandal, Mulugu District-506347. Presently in District Jail, Khammam Represented by his wife Daravath Vijaya, Aged.43 years, Occ.Coolie.

**...PETITIONER**

**AND**

1. The State of Telangana, rep. by its Principal Secretary, Excise Department, Secretariat, Hyderabad.
2. The Executive Magistrate-cum-Tahsildar, S.S. Tadvai Mandal, Mulugu District.
3. The Station House Officer, Prohibition and Excise Station, Mulugu, Mulugu District.
4. The Superintendent, District Jail, at Khammam, Khammam District.

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the 2<sup>nd</sup> Respondent in issuing the Warrant in MC No.423/2022, dated 02/11/2022 as illegal, arbitrary and in violation of Article 14 and 21 of the Constitution of India and also violative of procedure prescribed under Cr.P.C and consequently set aside warrant in MC No.

423/2022, dated 02/11/2022 and also direct the 4th respondent to release the Petitioner from the District Jail, at Khammam, Khammam District.

**IA NO: 1 OF 2022**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents herein to release the Petitioner herein from the District Jail, at Khammam, Khammam District pending disposal of the main Writ Petition.

**Counsel for the Petitioner: SRI B. BALAJI**

**Counsel for the Respondent Nos. 1 & 3: GP FOR PROHIBITION AND EXCISE**

**Counsel for the Respondent No.2: GP FOR REVENUE**

**Counsel for the Respondent No.4: GP FOR HOME**

**The Court made the following: ORDER**

**HON'BLE SRI JUSTICE C.V.BHASKAR REDDY**

**WRIT PETITION No.40802 of 2022**

**ORDER:**

This writ petition is filed challenging the impugned warrant dated 24.05.2022 issued by respondent No.2 in exercise of powers under Section 122(1)(b) of Cr.P.C.

2. The impugned warrant reflects that after being bound over, the petitioner was implicated in M.C.No.423/2022. Owing to the alleged involvement of the petitioner in Excise Offence, respondent No.2 concluded that the petitioner has committed breach of the bond furnished by her under Section 110 of Cr.P.C.

3. Learned counsel for the petitioner contends that as per Section 122(1)(b) of Cr.P.C, if any person after having executed a bond without sureties for keeping the peace in pursuance of an order of a Magistrate under Section 117 of Cr.P.C, is proved, to the satisfaction of such Magistrate or his successor- in- office, to have committed breach of the bond, such Magistrate or successor-in-office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall

be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law. Learned counsel further contended that respondent No.2 issued the impugned warrant in exercise of powers under Section 122(1)(b) of Cr.P.C without affording any opportunity of hearing or without giving any reasons as required under Section 117 of Cr.P.C and as such prayed for setting aside the impugned warrant.

4. This Court is of the opinion that the authority is empowered to issue warrant under Section 122(1)(b) of the Act only after passing reasoned orders under Section 117 (1) of the Act. Further, mere arraignment in an offence cannot be taken to be a conviction whereby it could be said that the petitioner had committed a breach of the bond furnished by him for maintaining good behavior and the respondent authorities cannot exercise the powers under Section 122 (1) (b) of Cr.P.C. for detaining the petitioner in prison for violation of the alleged breach of bond. Therefore, unless the petitioner has been held guilty of any offence or being convicted by the competent criminal Courts, the respondent authorities are not having power to hold that mere involvement in a crime would itself constitute breach of bond furnished by the petitioner.

5. Further, this Court in similar circumstances has taken a similar view in W.P.Nos.4802 of 2016 dated 15.02.2016, 12274 of 2022 dated 24.08.2022 and 13381 of 2023 dated 11.05.2023.

6. In view of the same and since the petitioner has not been convicted in any of the offences which were registered against him and the respondents have not followed the procedure as contemplated under Cr.P.C., the impugned warrant is liable to set aside.

7. Accordingly, the Writ Petition is allowed by setting aside the impugned warrant dated 24.05.2022, issued by respondent No.2 in M.C.No.423/2022. No order as to costs.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

**SD/- N. CHANDRA SEKHAR RAO**  
**ASSISTANT REGISTRAR**

**//TRUE COPY//**

**SECTION OFFICER**

To,

1. The Principal Secretary, Excise Department, State of Telangana, Secretariat, Hyderabad.
2. The Executive Magistrate-cum-Tahsildar, S.S. Tadvai Mandal, Mulugu District.
3. The Station House Officer, Prohibition and Excise Station, Mulugu, Mulugu District.
4. The Superintendent, District Jail, at Khammam, Khammam District.
5. One CC to SRI B. BALAJI, Advocate [OPUC]
6. Two CCs to GP for Prohibition and Excise, High Court for the State of Telangana at Hyderabad. [OUT]
7. Two CCs to GP for Revenue, High Court for the State of Telangana at Hyderabad [OUT]
8. Two CCs to GP for Home, High Court for the State of Telangana at Hyderabad [OUT]
9. Two CD Copies

MP



**HIGH COURT**

**DATED:07/07/2023**



**ORDER**

**WP.No.40802 of 2022**

**ALLOWING THE WRIT PETITION  
WITHOUT COSTS**

(14)  
MA  
22/8/23