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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.08.2026

PRONOUNCED ON : 21.08.2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

HCP No. 768 of 2026

AND

WP CRL. NO. 1194 OF 2026,

WPMP CRL. NO. 398 OF 2026

HCP.No.768 of 2026:

Mohamed Sameer
S/o. Zahir Hussain,
No.8/21, Dharga North Street,
Thondi, Thiruvadanai,
Ramanathapuram District - 623 409.

..Petitioner(s)

Vs

1. The Home Secretary,
Home Department (Prison),
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director General of Prisons,
Tamil Nadu Prison Department,
Egmore, Chennai - 600008.
3. The Deputy Inspector General of Prisons,
Chennai Range, Chennai.



4. The Superintendent of Prison,
Central Prison-I, Puzhal,
Chennai -600 066.

5. The Joint Secretary
Ministry of External Affairs,
South Block, New Delhi-110001.

6. The Joint Secretary (CS)
Government of India,
Ministry of Home Affairs,
North Block,
New Delhi-110001.
(R5 and R6 are suo motu impleaded as per the
order of this court dated 21.04.2026 in
HCP.No.768 of 2026)

..Respondent(s)

WP Crl. No. 1194 of 2026:

Mohamed Sameer
S/o. Zahir Hussain,
No.8/21, Dharga North Street,
Thondi, Thiruvadanai,
Ramanathapuram District-623409

..Petitioner(s)

Vs

1. The Home Secretary,
Home Department (Prison),
Secretariat, Fort St.George,
Chennai-600 009.
2. The Deputy Inspector General of Prisons,
Chennai Zone, Chennai.
3. The Superintendent of Prison,
Central Prison I,
Puzhal, Chennai 600 066

..Respondent(s)



Prayer in HCP No. 768 of 2026 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, directing the Respondents to produce the detenu Zakir Hussain before this Hon'ble Court and set him at liberty forthwith, as his detention beyond 21.09.2022 is illegal, unconstitutional and void, and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in WP Crl. No. 1194 of 2026 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus or order or direction in the nature of Writ, calling for the records relating to the proceedings in No.161/Muul/2016 by the 2nd respondent dated 04.05.2026 and quash the same and consequently direct the 2nd respondent to grant 28 days ordinary leave without escort to the petitioner's father Zakir Hussain, S/o Hyder Ali (Convict No.6724, PID 37645), who is presently confined in Central Prison-I, Chennai, and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner(s): Mr.N.Nagarjuna
For M/s.R.Bakkiyalakshmi
(In both Petitions)

For Respondent(s): Mr. C.R.Malarvannan,
Counsel for Government of Tamil Nadu,
(Criminal Side)
(for R1 To R4 in HCP.No.768 of 2026)
(for R1 to R3 in WP.Crl.No.1194 of 2026)

Mr. AR.L.Sundaresan,
Additional Solicitor General
Assisted By
Mr.K.Ramanamoorthy,
Senior Panel Counsel
(for R5 & R6 in HCP.No.768 of 2026)



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COMMON ORDER

(Order of the Court was made by Dr.Anita Sumanth, J.)

This Habeas Corpus Petition has been filed by the son of one Zahir Hussain (the latter referred to hereinafter as ‘convict’) seeking his production, and a direction to set him at liberty, as, according to the petitioner his detention beyond 21.09.2022 is unconstitutional. In the writ petition, the challenge is to order dated 04.05.2026, rejecting leave sought for the convict.

2.Mr.N.Nagarjuna, learned counsel appearing for Ms.R.Bakkiyalakshmi, learned counsel on record for the petitioner makes the following submissions. The convict had been tried before the High Court of Negombo, Sri Lanka in case No.HC/441/14, and convicted vide judgment dated 18.05.2015 under the applicable provisions of the Poisons, Opium and Dangerous Drugs (Amended) Act in force in Sri Lanka and was sentenced to undergo life imprisonment on three counts.

3.While in jail in Sri Lanka, the convict made an application seeking transfer to India in terms of the Repatriation of Prisoners Act, 2003 (Act), the Indo-Sri Lankan Agreement on Transfer of Sentenced Persons (Treaty) and the Repatriation of Sentenced Prisoners Rules, 2004 (Rules).

4.The concerned authority in the Ministry of Home Affairs noted that the offence committed was possession of 720 grams of heroin, and being



commercial quantity, adapted the sentence in accordance with Section 21 of the Indian Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), that entailed minimum sentence of 10 years imprisonment and fine of Rs.1,00,000/-.

5. The Indian authority thus communicated to the Sri Lankan authority that, after adjusting the period of detention already undergone in Sri Lanka, the convict would be kept in prison upto 21.09.2022 on his repatriation. The consent of the convict for the aforesaid sentence was obtained and he was sent to India on 13.03.2017.

6. The convict and his family are aggrieved that he continues to be incarcerated beyond 21.09.2022 despite the communication to aforesaid effect, and has hence instituted this Habeas Corpus Petition seeking his production and release. Learned counsel for the petitioner relies upon judgment dated 11.11.2022 of the Supreme Court in Crl.A.No.71 of 2022.

7.Mr.AR.L.Sundaresan, learned Senior Counsel for Mr.K.Ramanamoorthy, learned Senior Panel Counsel appears for R5 and R6.

8.In the counter filed by the 5th and 6th respondents in HCP, they take the stand that the respondents are required to obtain consent of the Country imposing the sentence to the adapted sentence. Such adaptability of sentence has been sought by the authorities only by letter dated 27.04.2026 (Reminders



dated 16.06.2026, 22.06.2026 and 06.07.2026) and hence, and till such time the requirements of the Treaty are met, the detention cannot be said to be illegal.

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9.Their stand, in specific, is that communication dated 29.07.2016 has been issued in error and does not either constitute a legal order of adaptation or confirm any enforceable right upon the petitioner. This Habeas Corpus Petition is hence, according to them, not maintainable.

10.Mr.Sundaresan also argues that there is no prejudice caused to the petitioner by virtue of his repatriation. Had he remained in Sri Lanka, he would have been subject to life imprisonment whereas, he may now have the benefit of a reduced sentence as per Indian law, subject to concurrence of the sentencing State. Seen in that context, he can really have no grievance. So saying, he would plead that the habeas corpus petition be dismissed.

11.We have heard both learned counsel.

12.The admitted facts in this case are that the convict had been arrested on 29.01.2012 for trafficking 720 grams of heroin, which is commercial quantity, and had been sentenced to three counts of life imprisonments on 18.05.2015.

13. The Repatriation of Prisoners Act, 2003 (Act) was enacted to provide for the transfer of certain prisoners from India to a country/place outside India and vice versa. Section 3, dealing with the Application of the Act, states that the



Central Government may, by Notification, direct that the Act would apply to a country/place outside India, and if there is a Treaty subsisting with that country, the Treaty shall be incorporated in the Notification.

14. Together, they operate as a framework of a reciprocal arrangement between the Central Government and foreign States to enable the transfer of convicts from India to other countries and vice versa. Sections 12 states that the Central Government may accept the transfer of a prisoner who is a citizen of India from a contracting State wherein he is undergoing sentence of imprisonment subject to mutually acceptable terms, and issue a warrant in prescribed form to detain the prisoner in prison in accordance with the provisions of section 13.

15. Section 13 deals with the '*Determination of prison and issue of warrant for receiving transfer in India*' and provides that while the enforcement of the sentence imposed by the Foreign Court shall be governed by the law of the receiving State, the receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.

16. Sub-section (6) of Section 13 however clarifies that if the sentence of imprisonment passed against the prisoner by the contracting State is incompatible with Indian law in regard to its nature, duration or both, the Central Government may adapt the sentence either as to the nature, duration or



both, to one that is compatible with a sentence provided for a similar offence committed in India.

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17. A bilateral Treaty had been entered into between the Governments of India and Sri Lanka on 24.10.2005 for the transfer of sentenced persons, that provides for the terms and conditions agreed upon by the two Countries for exchange of prisoners.

18. For the purposes of this writ petition, it would suffice to refer to Article 8, that deals with continued enforcement of sentence and the manner by which the receiving State shall enforce the same, and reads as follows:

‘ARTICLE 8

Continued enforcement of sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.

2. If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by an order of a Court or by an administrative order, with the consent of the transferring State, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration, the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall, however, not aggravate, by its nature or duration, the sentence imposed in the transferring State.’

19. The receiving State is hence bound by the sentence imposed by the transferring State, both in regard to its nature and duration, that may be adapted to align with the domestic law of the receiving State. However, if the sentence,



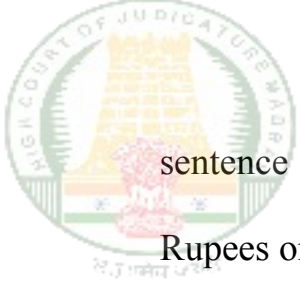
by nature or duration or both, is incompatible with the law of the receiving State then the receiving State may, by a Court or administrative order, adapt the sentence to one that is prescribed by its law.

20. Article 8(2) says that such adoption shall be '*as far as possible correspond with the sentence imposed under the judgment of the transferring State*'. Such adaptation shall be with the concurrence of the transferring/sentencing State. The transfer of a convict would hence depend on two factors, one, consent from the convict for transfer on the terms stipulated by the receiving State and two, if the sentence has been adapted to Indian law, concurrence from the transferring State.

21. The sentence imposed by the Sri Lankan Court on the convict is life sentence on three counts for possession of 720 grams of heroin, and the Indian NDPS Act prescribes, for the same offence, sentence of between 10 and 20 years of rigorous imprisonment and fine of Rupees one lakh.

22. While it is hence open to the receiving State, India, to suggest adaptation of the sentence imposed on the petitioner, such order of adaptation remains in the realm of suggestion, till such time the transferring State, Sri Lanka, acquiesces to the same, per Article 8 of the Treaty.

23. In the present case, the Joint Secretary (SR) of the Ministry of Home Affairs, vide communication dated 29.07.2016, has proposed adaptation of the



sentence imposed by the Sri Lankan Court to sentence of 10 years and fine of Rupees one lakh. Taking into account the period of imprisonment undergone, he states that the petitioner would be incarcerated upto 21.09.2022 on his repatriation.

24. Under the same communication, he deals with the case of one Rajarshi Das, who had been convicted in Sri Lanka for possession of 101.5 grams of cocaine, and proposes adaptation of the sentence to one under Section 23 of the NDPS Act for imprisonment of 20 years and fine of Rupees two lakh. Taking note of the imprisonment undergone, Rajarshi Das would be incarcerated upto 25.10.2032 on his repatriation.

25. Communication dated 29.07.2016 of the Joint Secretary (SR) is addressed to the High Commission of India, Colombo, with copies marked to the petitioner and Rajarshi Das, seeking their consent. Consent from the petitioner was obtained on 26.08.2016.

26. Rajarshi Das had sought transfer to India and had been transferred on 24.01.2017 and placed in Tihar Jail. Post his arrival, he made a representation seeking adaptation of sentence as per Indian Law. By communication dated 22.12.2017, the Deputy Secretary to the Government of India proposed adaptation of his sentence in line with the Indian NDPS Act and sought consent



of the Government of Sri Lanka for adaptation of the life sentence awarded to Rajarshi Das to the provisions of the NDPS Act.

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27. He concludes with a request to the High Commissioner of India, Colombo to take the matter up with the Government of Sri Lanka and obtain their consent to adaptation of sentence. This is the proper procedure to be followed. However, such procedure has not been followed in the case of the petitioner. The records reveal that an application had been made by the petitioner as early as in 2015 for transfer to an Indian prison and the request has been acceded to in early 2016.

28. We find exchange of communication between the Under Secretary to the Government of India and the Counsellor (Cons.), High Commission of India, Colombo, seeking various particulars in regard to the petitioner and consent of the Sri Lankan Government under the Treaty. An order has been passed in MOJ/L2/3/2/2015 by the Additional Secretary Legal, Ministry of Justice, Sri Lanka enclosing the warrants issued by the Hon'ble Minister of Justice Sri Lanka, and other required documents. The transfer of the prisoners (convict and Rajarshi Das) has taken place thereafter.

29. However, none of the communications in the five files produced (V-17011/17/2015-PR – Volume I – pages 1 to 260, V-17011/17/2015-PR – Volume II – pages 261 to 590, V-17011/17/2015-PR – Volume III – pages 591



to 892 and V-17011/17/2015-PR – Volume IV – pages 893 to 991 and V-17011/17/2015-PR – Volume – No number – pages 1 to 116) make reference to communication dated 29.07.2016 issued by the Joint Secretary (SR) proceeding to adapt the sentences to Indian Law. In fact, the request for adaptation has emanated from Rajarshi Das after his transfer to India on 24.01.2017 and in the case of Zakir Hussain/convict, no such request is available in the files shown to us.

30. Article 8 of the Treaty provides for adaptation of sentence and such adaptation would emanate only from the convict. Having said so, though in this case we do not find any request for adaptation in the files produced before us, we do not dwell on that in view of the trajectory that the matter has taken. This is also not the case of the respondents. Suffice it to state that, communication dated 29.07.2016 has no basis, and cannot be acted on, owing to lack of consent from the Sri Lankan government. This is also the case of the 6th respondent, the Joint Secretary (CS) in their counter dated 01.08.2026.

31. The authority has sought consent from the Sri Lankan government only on 27.04.2026, when this matter was being heard. Rajarshi Das had approached the Delhi High Court seeking disposal of his representation seeking adaptation, and that Writ Petition (WP Crl.No.2972 of 2017) had been permitted to be withdrawn as the learned Standing Counsel for Union of India had stated



that the representation was under active consideration and would be disposed expeditiously.

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32. Rajarshi Das's case had thereafter been considered and an order of adaptation passed on 31.08.2020 after consideration of the relevant provisions of 2003 Act and the Treaty. At paragraph Nos.7 and 8, the Deputy Secretary to the Government of India records that consent of Sri Lanka was sought for adaptation of the sentence of Rajarshi Das as per Indian Law and on 09.07.2020 the Government of Sri Lanka had communicated consent to such adaptation.

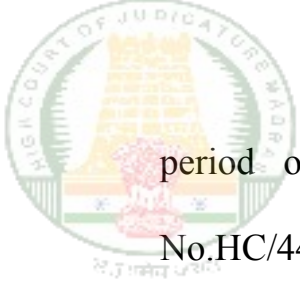
33. The warrant for transfer has been issued by the Ministry of Justice in Sri Lanka on 20.01.2016 and reads thus:

'Whereas under section 6(1) of the Transfer of Offenders Act, No.5 of 1995, I consider it appropriate to transfer out of Sri Lanka Zahir Hussain to India for the purpose of the said Zahir Hussain serving the balance period of his term of imprisonment imposed on him in case No.HC/441/14 in the High Court of Negombo, Sri Lanka and therefore I do by this warrant authorize the said transfer.

You are hereby authorized to take the offender to India and to deliver him to the custody of a person duly authorized by the appropriate authority of India to take charge of the offender.

This Warrant shall also be the authority for such person to keep the offender in custody until he is taken out of Sri Lanka.'

34. It is based on the above warrant that the warden in the prison in Sri Lanka has entrusted the petitioner to the custody of the Indian Officials deputed to escort him to India. The transfer out of Sri Lanka is for serving the balance



period of the term of imprisonment imposed on the convict in case No.HC/441/14 in the High Court of Negombo, Sri Lanka.

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35.The adaptation proposed under communication dated 29.07.2016 is only thereafter, and there is nothing to indicate consent to the adaptation proposed, or for that matter, that the aforesaid communication was ever brought to the attention of the Sri Lankan authorities.

36.Since the authorities have sought adaptation of the sentence only now, the petitioner must await the same. The respondents are directed to follow up with the Sri Lankan authorities and keep the petitioner duly informed of progress on that front.

37. As far as the convict is concerned, he has certainly been misled and lulled to believe that the sentence imposed by the Sri Lankan Court has been adapted to Indian law, and that he would be incarcerated only upto 21.09.2022. This cannot be brushed aside as an error, as the consequences are serious and affect the liberty of the convict. He must be compensated.

38.The defence taken by the respondents, that had the convict filed a writ petition like Rajarshi Das, the adaptation would have been sought earlier, is not acceptable in light of communication dated 29.07.2016 that has all the trappings of an official communication and does not anywhere indicate that it is subject to concurrence from the sentencing country.

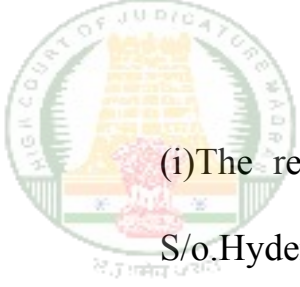


39. That apart, once the proposal for adaptation has been put in motion, there is no justification in the authorities abandoning the process, especially since it has been communicated to the convict. For the aforesaid reasons, we are of the view that the convict must be compensated and direct respondent Nos. 5 and 6 to jointly remit cost of Rs. 1 lakh to the convict within a period of four (4) weeks from today.

40. In the absence of an order of adaptation of sentence that is mandatory in line with the Act and Treaty, communication dated 29.07.2016 cannot be enforced and as a consequence, the question of illegal detention does not arise. This Habeas Corpus Petition is dismissed though with costs imposed on respondent Nos. 5 and 6.

41. As far as the writ petition is concerned, the request for ordinary leave of 28 days has been rejected invoking the bar under Rule 21 of the Tamil Nadu Suspense of Sentence Rules, 1982 (Rules). In view of the discussion supra, and as there is no adverse report in regard to his conduct or threat perception, we are of the view that the petitioner may be granted leave of 10 days with escort.

42. Accordingly, impugned order dated 04.05.2026 is set aside and ordinary leave of 10 days with escort is granted, though on the following conditions:



(i)The respondents are directed to release the convict viz., Zakir Hussain, S/o.Hyder Ali, confined at Central Prison-1, Puzhal, Chennai on ordinary leave for a period of ten (10) days with escort i.e., from 24.08.2026 to 02.09.2026.

(ii)The convict shall be released on 24.08.2026 at 10.00 A.M. and is directed to surrender before the Superintendent of Prisons, Central Prison-1, Puzhal, on 03.09.2026 before 10.00 A.M.

(iii)During the leave period, the Convict Prisoner shall abide by all the conditions prescribed in the Jail Manual.

43. The Writ Petition is allowed to the above extent. Connected Miscellaneous Petition is closed.

(A.S.M.,J.) (S.M.,J.)

21.08.2026

VS

Index: Yes

Speaking order

Neutral Citation: Yes

Note: i) Issue this order copy today.

ii) Records (5 files) have been handed over to

Mr.Harikrishnan, Advocate, office of the

learned Additional Solicitor General today.



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To

1. The Home Secretary,
Home Department (Prison),
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director General of Prisons,
Tamil Nadu Prison Department,
Egmore, Chennai - 600008.
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7. The Public Prosecutor, High Court, Madras.



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HCP No. 768 of 2
AND WP CRL. NO. 1194 OF 2
WPMP CRL. NO. 398 OF 2026



**DR.ANITA SUMANTH, J.
AND
SUNDER MOHAN, J.**

VS

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21.08.2026