

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserve Date : 07-07-2015

Date of Decision : 22-12-2015

CORAM :

THE HON'BLE DR.JUSTICE S.TAMILVANAN
AND
THE HON'BLE MR.JUSTICE C.T.SELVAM

H.C.P.No.2989 of 2014

Kevin John Sajith

..... Petitioner

vs

1. The Inspector of Police
S-2, Airport Station Police,
Meenambakkam,
Chennai.
2. The Inspector of Police
Punalur Police Station,
Kollam District,
Kerala.
3. The Senior Immigration Officer
AFPRO B.Batch,
International Airport,
Chennai.
4. The Union of India
Rep. by its Secretary,
Ministry of External Affairs,
New Delhi.
5. The State of Tamil Nadu
Rep. by its Secretary,
Fort St. George,
Chennai.
6. The State of Kerala
Rep. by its Secretary,
Home Department,
Secretariat, Thiruvananthapuram,
Kerala.
7. The Detective
Inspector Crime Branch CID,
EOW1, Kollam, Kerala.

..... Respondents

(R3 impleaded as per the order of this Court
dated 12.11.2014 made in M.P.No.1 /14 in
H.C.P.No.2989 / 14).

(R4 impleaded as per the order of this Court
dated 08.06.2015 made in M.P.No.2 / 14 in

Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Habeas Corpus, directing the first respondent police to produce the body of the mother of the petitioner, namely Sarah Thomas, aged about 39 years, who is illegally detained, before this Court and set her at liberty.

For petitioner : Mr.N.Anand Venkatesh

For Respondents : Mr.A.N.Thambi Durai
Additional Public Prosecutor
for R1 & R5
Mr.G.Rajagopalan,
Additional Solicitor General for
Mr.V.P.Sengottuvel for R3 and R4
Ms.Suvitha AS,
Spl. G.P, Government of Kerala for R7

ORDER

(Order of the Court made by S.TAMILVANAN, J)

This Habeas Corpus Petition has been filed by the petitioner, seeking an order, directing the first respondent police to produce the body of the mother of the petitioner, Mrs.Sarah Thomas, aged about 39 years, who is illegally detained, before this Court and set her at liberty.

2. The petitioner has averred in his affidavit that his mother, Mrs.Sarah Thomas, who has been working in Dubai for more than 10 years, use to visit him in India and holding valid passport in Passport No.K0895902, which was renewed on 20.10.2011. The petitioner further submits that his mother, had come from Dubai on 29.10.2014, by Emirates Airways and landed at Chennai Airport along with her office colleagues to attend the marriage of one of their company staff, Nagraj Natarajan at Madurai, slated to be held on 30.10.2014, for which, she had booked flight ticket from Chennai to Madurai. The flight timing from Chennai to Madurai was at 10.30 a.m. However, immediately on her arrival, she was questioned by Emigration Officials and during the enquiry, she was told that she need to be interrogated and in view of the said interrogation, she and her colleagues cancelled the Flight and booked another flight, which was scheduled to be at 2.30 pm on the said date and were also waiting for clearance by the Emigration.

3. It is further stated that instead of releasing his mother after interrogation, the Emigration Officials alerted the first respondent Police in connection with some look out notice issued by the second respondent police in respect of a woman carrying almost a similar name as that of his mother and based on the information given by the Emigration Officials, the first respondent police, without getting proper verification from the second respondent Police, arrested Mrs.Sarah Thomas, mother of

the petitioner, for which an FIR was registered in Crime No.177 of 2014 under Section 41 (1) (g) of Cr.P.C and then she was produced before the Judicial Magistrate, Alandur, who in turn remanded her to custody till 31.10.2014 for identification by the second respondent police, and then she was sent to Central Prison, Puzhal.

4. The petitioner immediately made a thorough search in the Internet and able to find out a look out notice issued by the second respondent Police in respect of a woman by name 'Saramma Thomas Sara Williams' belonging to Kerala. The passport of the petitioner's mother carries all the details and the said look out notice seems to have been issued by the second respondent way back on 24th October 2009. The petitioner further submits that his mother has visited Chennai even on the previous month to see her son, the petitioner herein and during her earlier visits, no such interrogation had taken place. However, all of a sudden, on 29.10.2014, she was illegally detained by the first respondent police on a mistaken identity. Hence, the petitioner has approached this Court with this petition, seeking for the relief as stated supra.

5. Learned counsel appearing for the petitioner submits that there was infringement of the fundamental rights, as personal liberty guaranteed under Article 21 of the Constitution of India has been grossly violated and the petitioner's mother was subjected to humiliation, by way of illegal arrest and detention, the petitioner is seeking appropriate damages from the respondents.

6. The third respondent has filed counter, wherein it is stated that a woman by name, Sarah Thomas, an Indian National, holding Passport No.K0895902 issued at Dubai on 20.10.2011, valid till 19.10.2021, approached Immigration for the arrival clearance at Chennai Airport at 0905 hrs on 29.10.2014. The scrutiny of her passport revealed that her name was matching with a Look Out Circular, originated by Assistant Director, Interpol, CBI, New Delhi. The name mentioned in the Look Out Circular was Sara Williams Saramma Thomas @ Saramma Thomas. As per the Look Out Circular, action had to be taken by the Immigration "To Detain and Inform Originator", if intercepted at arrival / departure side. It is further stated that the mother of the petitioner, Sarah Thomas, who had been intercepted on 29.10.2014 was earlier known as Saramma Thomas, as per her expired Passport No.B3885772 and she has changed her name as Sarah Thomas in her current Passport No.K0895902. An endorsement confirming her change of name is affixed in Page No.3 of her current passport. The year of Birth (1975) of the passenger / mother of the petitioner was also matching with the Look Out Circular details. More over the profile of the passenger was similar and the native place of the passenger / mother of the petitioner was in the vicinity of the place mentioned in the Look Out Circular. Therefore, on the said background, the Assistant Director, Interpol, who was the originator of the Look Out Circular was informed immediately by Fax about the interception of the passenger by name Sarah Thomas, who was matching several matching parameters to that in the Circular. The details of the intercepted passenger was also communicated to the

AD / Interpol by Fax. Subsequently, he was requested to hand over the passenger to the local police till the Kerala police reaches to take her in custody. As per the Originator's instruction by Fax, filed in the typed set on behalf of the third respondent, the passenger / mother of the petitioner was handed over to the Inspector of Police, Airport Police Station, Chennai Airport on 29.10.2014 at 16.41 hrs.

7. It is further stated in the counter filed by the third respondent that subsequently Kerala Police came to Chennai and took her to Kerala, in order to remand her. Thereafter, the Detective Inspector, CBCID, EOW, Kollam, stated in the report filed at the Court of Judicial I Class Magistrate-III, Punalur, Kerala on 02.11.2014 that the petitioner's mother Sara Thomas had been mistakenly identified as Sara Williams, by the Immigration Officials at Chennai Airport on 29.10.2014, in view of the Look Out Circular. Thereafter, the petitioner's mother, Sarah Thomas was let free on 02.11.2014. Hence, the third respondent pleaded to close this Habeas Corpus Petition.

8. Mr.G.Rajagopal, Additional Solicitor General appearing for the respondents 3 and 4 submitted that since there is matching parameters as per the Look Out Circular, the mother of the petitioner was intercepted bonafidely and handed over to the local police, after verification with the Assistant Director, Interpol and there was no personal allegation against the third respondent and that there were reasonable grounds to suspect that the person in the Look Out Circular and the petitioner's mother could be the same person and further, the said Sarah Thomas was let free on 02.11.2014 and hence, submitted his arguments for the dismissal of the Habeas Corpus Petition.

9. On a perusal of the documents available on record, it is seen that pursuant to the interrogation, FIR was registered against Mrs.Sarah Thomas, mother of the petitioner in Crime No.177 of 2014 under Section 41 (1) (g) of Cr.P.C and was produced before the Judicial Magistrate, Alandur, who in turn remanded her till 31.10.2014 and she was sent to Central Prison, Puzhal on 29.10.2014. The detainee was kept in Puzhal Prison from 29.10.2014 to 31.10.2014. However, without producing the detainee before the Judicial Magistrate, Alandur, she was handed over to CBCID Police, Kerala and taken to Kerala. The petitioner's mother was handed over to the custody of CBCID police, Kerala, around 7 pm on 31.10.2014. Thereafter, the Kerala CBCID police made a detailed investigation and obtained statements from all the concerned and filed their report. Then the detainee was produced before the Judicial I Class Magistrate No.III, Punalur at 9 pm on 02.11.2014. The Magistrate, considering all the relevant facts, came to the conclusion that it was a clear case of mistaken identity and accordingly, issued an order for immediate release of the petitioner's mother, Mrs.Sarah Thomas, on the same day. A further order, dated 02.11.2014 under Ref. CrI.M.P.No.9450 of 2014 was also issued for the release of the passport of the detainee.

decisions were relied on by both sides :

1. Thangappan v. Secy., State of T.N., 2010 (6) MLJ 25
2. Vikram Sharma v. Union of India, 2010 SCC Online Del 2475
3. Sumer Singh Salkam v. Asstt. Director, 2010 SCC Online Del 2699

4. D.K.Basu v. State of W.B., AIR 1997 SC 610

11. In D.K.Basu v. State of W.B., reported in AIR 1997 SC 610, the Hon'ble Supreme Court, while dealing with a case relating to Articles 21, 22(1) of the Constitution of India, has held that any form of torture or cruel, inhuman or degrading treatment, would fall within the inhibition of Article 21, whether it occurs during investigation, interrogation or otherwise. The Supreme Court has given guidelines to be followed in all cases of arrest or detention till legal provisions are made in that behalf.

12. In Thangappan vs. Secy., State of T.N., reported in 2010 (6) MLJ 25, this Court has held that if life or personal liberty is deprived of other than in accordance with the procedure that would be against the Constitutional mandate. Hence, safeguarding personal liberty, creates duties and vests responsibilities on the police and the Magistrate and other Authorities and any deviation of the mandate in effecting arrest and continuing detention would certainly render such action as illegal and violation of freedom of liberties guaranteed under Article 21 of the Constitution. It is further held that deprivation of personal liberty cannot be taken lightly, when imputation or incarceration is not justified, on account of inadvertence or by dereliction of duties and the injuries suffered by the person has to be duly compensated.

13. In a decision of the Court of Appeal of England in Taylor v. Chief Considerable of Thames Valley Police, reported in 2004 EWCA Civ 858, it has been held that even for a few hours of wrongful detention, appropriate damages could be awarded, since personal liberty is a valuable Fundamental Right, guaranteed under the Constitution, which cannot be tampered with.

14. In State of Maharashtra v. Buddhikota Subha Rao, reported in AIR 1989 SC 2292, the Hon'ble Supreme Court held that Code of Criminal Procedure is the "Law" for the purpose of safeguarding personal liberty of any person under Article 21 of the Constitution of India.

15. In Bhim Singh v. State of J& K reported in (1985) 4 SCC 677, the Hon'ble Apex Court has held as follows :

"Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct. However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions, in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with

whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs 01 otherwise is now established by the decisions of this court in Rudul Sah v. State of Bihar and Anr. 1983 (3) SCR 508 and Sebastian M. Hongray v. Union of India, 1984 AIR SC 1026. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation."

16. On the facts and circumstances, it is relevant to refer Article 21 of the Constitution of India, which reads as follows :

"21. Protection of life and personal liberty
- No person shall be deprived of his life or personal liberty except according to procedure established by law."

17. In order to seek judicial redressal under Article 21 of the Constitution, it is made crystal clear that the affected person need not be a citizen of India, as the Article safeguards the life and personal liberty of any person, whether such person is a citizen of India or otherwise, so as to safeguard the human rights. The Universal Declaration of Human Rights declared on the 10th December 1948, by General Assembly of United States, has been incorporated in various Articles of our Constitution as Fundamental Rights. So far as Article 21 relating to life and personal liberty is concerned, it gives guarantee for life and liberty of any person, irrespective of the Nationality of the person. Similar provision with regard to life and personal liberty is available in the American Constitution, which says that the Right to life and personal liberty shall not be tampered with, except under due process of law, whereas the Indian Constitution contemplates that life and liberty shall not be taken away, except under the procedure established by law. As per the Indian Constitution, not only the legal procedure to be followed, but such procedure could have been established in terms of the Constitutional mandate or guarantee given as Fundamental Rights, as per Article 21 of the Constitution. Therefore, we are of the considered view that the guarantee given under Article 21 gives comparatively more safeguard than the guarantee given under the American Constitution. Hence, such basic right cannot be taken away so lightly by the authorities concerned.

18. In the instant case, the material papers available on

record would show that Mrs.Sarah Thomas, mother of the petitioner herein, working in Dubai, having a valid passport in Passport No. K0895902, had arrived by Emirates Airways and landed at Chennai Airport for the purpose of attending a marriage at Madurai on 29.10.2014, however she was detained by the Immigration Officials at Chennai Airport. If there is any reasonable suspicion about a passenger, it is open to them to take appropriate action, according to law. The copy of the passport, which was verified with the original, shows that the petitioner's mother had visited Chennai Airport on several times and she has stated that her residence is in Kerala and she is not Sara Williams Saramma Thomas @ Saramma Thomas, Sramma Thomas, against whom a criminal case was pending, however, she was arrested and detained in the Central Prison, Puzhal, Chennai and then taken to Kerala on a mistaken identity.

19. Mr.G.Rajagopalan, Additional Solicitor General submitted that the said mistaken identity was bonafide, as the name of the petitioner's mother, Sarah Thomas is similar to that of the Sara William, who was required by the police, in connection with a criminal case. According to him, the details of the intercepted passenger was also communicated to AD / Interpol by Fax and the concerned official was requested to hand over the passenger to the local police till the Kerala police reaches to take her into custody. Learned Additional Solicitor General argued that the mistaken identity was bonafide and hence, the petitioner is not entitled to seek damages.

20. Per contra, Mr.N.Anand Venkatesh, learned counsel appearing for the petitioner drew the attention of this Court to the Passport of the petitioner's mother, Mrs.Sarah Thomas, the photo relating to her with reference to Sarah Williams Saramma Thomas @ Saramma Thomas, Sramma Thomas, who is expected to be secured in connection with a criminal case.

21. Having gone through the materials, we are of the considered view that both the names are not identical. Even in case of identical names, it is the duty of the concerned officials, to act in a responsible manner, since personal liberty is a Fundamental Right guaranteed under the Constitution of India and also one of the unalienable Human Rights.

22. As contended by the learned counsel appearing for the petitioner, we are of the view that the photo, Mrs.Sarah Thomas, mother of the petitioner is different from that of the photo of Sarah Williams, an accused in a case. The other details furnished in the passport, that were available with the petitioner's mother also could not tally with the details of Sarah Williams. It is not in dispute that the petitioner's mother had no bad antecedent or any criminal case and she had denied that she was not Sarah Williams and the other details relating to Sara Williams. However, without verifying the identity of Mrs.Sarah Thomas, the petitioner's mother, the Immigration Officials handed over her, after a case being registered under Section 41 (1) (g) of Cr.P.C and she was also remanded to judicial custody by the Judicial Magistrate, Alandur and sent to Central Prison, Puzhal, Chennai. It is unfortunate that the mistaken identity has tampered with

the Fundamental Right, personal liberty and also affected the reputation of a respectable person, who has no criminal background. Strangely, she was taken to Kerala by CBCID police, Kerala from Puzhal Prison, even without getting any judicial order. After making a detailed enquiry in Kerala, based on the statements from various persons, she was produced before the Judicial First Class Magistrate No.III, Punalur on 02.11.2014 at 9 p.m. The order passed by the Judicial Magistrate, Punalur, Kerala, clearly shows that the petitioner's mother, who had been arrested and remanded to judicial custody, then taken to Kerala in a vehicle from Central Prison, Puzhal, Chennai and was kept in their custody till 02.11.2014 is nothing to do with Sarah Williams and everything had happened only on a mistaken identity.

23. The reasons assigned by the learned Additional Solicitor General appearing for R3 and R4 and the learned Special Government Pleader appearing for R7 is not convincing. On account of improper verification, an innocent person, who was in possession of a valid passport and other valid documents was sent to Central Prison, Puzhal, Chennai in an irresponsible manner, as contended by Mr.N.Anand Venkatesh. Therefore, we are of the view that it is a harassment, causing grave mental agony to an innocent person. The reasons assigned by the respondents that the mistaken identity was on account of bonafide reasons could not be accepted. There is a gross negligence on the part of the authorities in sending Mrs.Sarah Thomas, mother of the petitioner to Central Prison, Puzhal, Chennai and then taking to Kerala. We are of the view that there is a violation of Human Rights. Hence, in the light of various decisions rendered by the Hon'ble Supreme Court, referred to above, we are of the view that the petitioner is entitled to seek damages from the respondents, who are responsible for causing legal injury and mental agony to Mrs.Sarah Thomas and her son, the petitioner herein for violating the Constitutional mandate. However, Mrs.Sarah Thomas, who was also present before this Court on the earlier two occasions would say that she is not inclined to receive any damages, but the same shall be ordered to be paid by the respondents, who are responsible for the illegal detention to any Charitable Trust or Social Welfare Organisations. The learned counsel for the petitioner asked this Court to give suitable guidelines in this regard, at least to safeguard the rights of others in future.

24. Having considered the facts and circumstances, we find it just and reasonable to impose a sum of Rs.2,00,000/- (Rupees Two lakhs only) as damages to be paid by the respondents 1, 3, 4 and 5, out of which, 50% shall be paid by the Union of India, Ministry of External Affairs and another 50% shall be paid by the Government of Tamil Nadu. Considering the submission made by the learned counsel appearing for the petitioner that the petitioner is not inclined to get the compensation amount and also the recent Natural calamity of flood, we direct to pay the said amount towards the "Tamil Nadu Chief Ministers Flood Relief Fund", within four weeks from the date of receipt of copy of this order.

Airport :

(i) The Authorities should carefully verify the genuineness of the Passport and VISA, if the person has any foreign passport.

(ii) The photo of the passenger available in the passport should be compared properly with the photo of the suspected person.

(iii) There should be proper enquiry with regard to other details, such as age, address given by the passenger / person with the details of the suspect. Mechanically in an irresponsible manner, no person could be sent to prison, merely by registering a case, on the ground of suspicion.

(iv) When there is serious doubt about the identity of the passenger / person, the concerned Authority, identifying the person should file a report on the identity or with regard to the suspicion, referring supporting materials available and the reason for the conclusion of such suspicion and when there is a suspicion on the identity of the passenger, the passenger / person, should not be sent to prison but only to a place with proper safety and security.

(v) If the person is a woman passenger, proper woman official should be posted for her safety.

(vi) If any person is sent to prison unreasonably, the concerned official should be made responsible, by way of initiating appropriate proceeding, in case if the passenger is a genuine person, in order to safeguard the Human Rights and Fundamental Rights, guaranteed under Article 21 of the Constitution.

The Habeas Corpus Petition is disposed of with the aforesaid directions and guidelines. The damages of Rs.2,00,000/- (Rupees Two lakhs only) imposed on the respondents 1, 3, 4 and 5 shall be paid both the Union of India, Ministry of External Affairs and the Government of Tamil Nadu to the credit of "The Tamil Nadu Chief Ministers Flood Relief Fund". It is left open to the authorities to take action against the officials, who are responsible for the illegal detention of the petitioner's mother, Mrs.Sarah Thomas. No order as to costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Inspector of Police
S-2, Airport Station Police,
Meenambakkam,
Chennai.
2. The Inspector of Police
Punalur Police Station,
Kollam District,
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7. The Detective
Inspector Crime Branch CID,
EOW1, Kollam, Kerala.
8. The Public Prosecutor,
High Court, Madras

3 ccs Mr.S. Dhanasekaran, Advocate, Sr. 69481

1 cc to Mr.V.P. Sengottuvel, Advocate, sr. 69395

H.C.P.No.2989 of 2014

KGK (CO)
kk 12/1