

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 03-03-2016

Pronounced on: 09-03-2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.1662 of 2015

S.Sengkodi

.. Petitioner.

Versus

- State rep. by
1. The Secretary to Government,
Department of Home, Fort St.George,
Chennai-9.
 2. The Deputy Commissioner of Police,
Armed Reserve Police, St. Thomas Mount,
Chennai-16.
 3. The Superintendent of Police,
Central Prison-I,
Puzhal, Chennai-66.
 4. Damodaran
 5. Arun

.. Respondents.

Prayer: Petition filed under Article 226 of the Constitution of India, praying for a Writ of Habeas Corpus, directing the first respondent to hold enquiry into the misconduct of illegal detention of the detinue Sundaramurthy, S/o.Vedi, TADA prisoner in the hands of the respondents 4 and 5 on 2.6.2015.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.A.N.Thambidurai
Addl Public Prosecutor (R1 to R3)

ORDER

M.JAICHANDREN, J.

Heard the learned counsel appearing on behalf of the petitioner, as well as the learned Additional Public Prosecutor appearing on behalf of the respondents.

2. This Habeas Corpus Petition has been filed by the petitioner, who is said to be a human rights activist and a friend of the detenu, namely, Sundaramurthy, son of Vedi, a TADA prisoner (prisoner No.3600), lodged in the Central Prison-I, Puzhal, Chennai, praying that this court may be pleased to direct the first respondent to hold an enquiry into the misconduct of illegal detention of the said detenu, in the hands of the respondents 4 and 5, on the night of 2.6.2015, and to pass such further or other orders, as this court may deem fit and proper in the circumstances of the case.

3. It has been stated that the detenu had been subjected to torture and illegal detention, by the respondents 4 and 5. It has been further stated that the detenu is in judicial custody, from 11.7.2007, relating to the case, in S.C.No.136/2011, on the file of the Assistant Sessions Court, Periyakulam, Theni District. For the purpose of trial, he has been taken from the Central Prison-I, Puzhal, to the Assistant Sessions Court, at Periyakulam, which is at a distance of over 400 kms. As per the order of the Superintendent of the Central Prison and endorsed by the Commissioner of Police, Chennai, the prisoner has to be detained in the Central Prison, Madurai, during the night hours, while being taken to the Assistant Sessions Court, Periyakulam, for trial and while being brought back to the Central Prison-I, Puzhal, Chennai.

4. It has been further stated that, on 1.6.2015, the detenu had been taken from the Central Prison-I, Puzhal, Chennai, to be produced before the Assistant Sessions Court, Periyakulam, to face trial, on 2.6.2015. Enroute to the Assistant Sessions Court, Periyakulam, the detenu had been lodged in the Central Prison, Madurai, during the night of 1.6.2015. The detenu was taken from the Central Prison, Madurai, at about 10.00 a.m, on 2.6.15, to be produced before the Assistant Sessions Court, Periyakulam. Since, it was found that the presiding officer was on leave, he had been taken to Uthamapalayam, and brought back to the Central Prison-I, Puzhal, Chennai, without detaining him at the Central Prison, Madurai, during the night of 2.6.2015, violating the order passed by the Superintendent of Central Prison and the Commissioner of Police, Chennai.

5. It has been further submitted that the detenu had been forced to travel for a distance of over 1000 kms, without any rest. It has also been submitted that the travel during the night hours was dangerous as the driving of the vehicle was in a rash manner. Further, there had been a serious chance of the detenu being shot down and killed, showing it as an encounter. Thus, it is clear that the 4th and the 5th respondents had acted in an illegal manner, resulting in serious risk being caused to the detenu, namely, Sundaramurthy. As such, it would be appropriate for this court to direct the first respondent to

hold an enquiry into the misconduct and the illegal detention of the detenu, by the 4th and 5th respondents, on the night of 2.6.2015, as the conduct of the 4th and the 5th respondents amounts to a serious violation of the human rights of the detenu.

6. Mr.Sankarasubbu, the learned counsel appearing on behalf of the petitioner had relied on the decision of the Supreme Court, in Rakesh Kaushik Vs. Superintendent, Central Jail, 1980 Supp Supreme Court Cases 183, and the decision of the Madras High Court in K.Valambal and others Vs. Government of Tamil Nadu, 1981 MLJ Reports (Crl.) Page 218, to substantiate the submissions made on behalf of the petitioner.

7. A counter affidavit had been filed by the 4th respondent narrating the sequence of events, while taking the detenu from the Central Prison-I, Puzhal, Chennai, to be produced before the Assistant Sessions Court, Periyakulam, Theni District, on 2.6.2015. It has been stated that the detenu had been taken from the Central Prison-I, Puzhal, Chennai, by the escort party, at 10.50 hours. The Assistant Jailer, Central Prison, Puzhal, had made the necessary endorsement in the passport. The detenu was taken by the escort party to be produced before the Assistant Sessions Court, Periyakulam, in S.C.No.136 of 2011. After the escort party had reached Madurai, the detenu had been lodged in the Central Prison, Madurai, at 20.30 hours, on 1.6.2015. Thereafter, at about 10.40 hours, on 2.6.2015, the detenu had been taken from the Central Prison, Madurai, to be produced before the Assistant Sessions Court, Periyakulam. While proceeding towards Periyakulam, the 'Q' Branch police officer had informed over phone that the Assistant Sessions Judge, Periyakulam, was on leave on the said date and that the detenu may be produced before the Assistant Sessions Judge, at Uthamapalayam, who was in charge of the Periyakulam Assistant Sessions Court. The detenu had been taken to the Assistant Sessions Court, at Uthamapalayam, at 12.55 hours. The case was called at 13.50 hours and the judicial custody of the detenu was further extended. Immediately, after the remand was extended, the escort party, along with the detenu, had proceeded towards Chennai in the police vehicle. Even though the detenu had objected for being taken to the Central Prison-I, Puzhal, Chennai, without being lodged at the Central Prison, Madurai, during the night hours of 2.6.2015, the escort party had to take the detenu to the Central Prison-I, Puzhal, Chennai, as it had been informed that the associates of the detenu were in detention in the Central Prison, Madurai, and that there could be a possibility of the detenu hatching a conspiracy, in furtherance of their activities. In such circumstances, the request of the detenu had not been complied with and he had been taken to the Central Prison-I, Puzhal, Chennai, and he had been handed over to the authorities of the said Prison, at about

23.35 hours, on 2.6.2015. The escort party had taken due care and caution to ensure the safety of the detenu, while he was in custody. All the necessary procedures prescribed by law had been followed by the escort party, at the time when the detenu was in their custody. There was no violation of the procedures to be followed by the escort party, as alleged by the petitioner, in the present Habeas Corpus Petition. The detenu was not subjected to any torture. The allegations made by the petitioner are vague and unsubstantiated and they are false in nature.

8. We have heard the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the learned Additional Public Prosecutor appearing on behalf of the respondents 1 to 3. We have perused the records available before this court, carefully. We have also considered the cases cited by the learned counsel appearing on behalf of the petitioner to substantiate his claims. We are of the considered view that there is no illegality or breach of the provisions of law committed by the escort party, while taking the detenu from the Central Prison-I, Puzhal, Chennai, on 1.6.2015, to be produced before the Assistant Sessions Court, Periyakulam, Theni District, and while being returned to the custody of the said prison, after the detenu had been produced before the Assistant Sessions Court, Uthamapalayam.

9. From the records available, it is clear that the escort party had followed the necessary procedures, while the detenu was in its custody. The reasons stated in the affidavit filed by the fourth respondent for not detaining the detenu in Central Prison, Madurai, during the night hours of 2.6.2015, is acceptable. It had been stated, in the counter affidavit filed on behalf of the fourth respondent, that the associates of the detenu had been lodged in the Central Prison, Madurai, and that there was a possibility of the detenu meeting them and hatching a conspiracy, in furtherance of their illegal activities. The said statement cannot be assailed, as a mere false apprehension.

10. It is also noted that the petitioner has not been in a position to substantiate her claim, by sufficient evidence, that the detenu had been tortured while he had been in the custody of the escort party. We are of the view that, in such matters, the safety and security of the detenu should be left to the discretion of the escort party and the authorities concerned, as such factors ought to be considered and appropriate decisions ought to be taken, based on available information and other relevant circumstances. As such we find no cause or reason to accept the contentions raised on behalf of the petitioner and to hold that there has been a breach of established procedures leading to the human rights violation of the detenu. We are aware that life and liberty of a person, as enshrined under Article 21 of the Constitution of India, including that of the

detenu, has to be protected and utmost care and caution has to be taken to ensure his safety and security. However, we do not find any breach of the procedures established by law on the part of the escort party, in whose custody the detenu was kept during 1.6.2015 and 2.6.2015. As such, we are compelled to hold that the present Habeas Corpus Petition is devoid of merits. Hence, it stands dismissed.

csH

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
Department of Home, Fort St.George,
Chennai-9.
2. The Deputy Commissioner of Police,
Armed Reserve Police, St. Thomas Mount,
Chennai-16.
3. The Superintendent of Police,
Central Prison-I,
Puzhal, Chennai-66.
4. The Joint Secretary to Govt.
Public (Law and Order) Department
Fort St.George, Chennai 9.
5. The Public Prosecutor,
High Court, Madras.

gj(II)
prk5/5

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