

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.BASKARAN

H.C.P.No.2134 of 2016

Shahina Begum

.. Petitioner

Vs

- 1.The Superintendent of Central Prison,
Puzhal-II,
Chennai-600 066.
- 2.The Deputy Superintendent of Police,
CBCID,
Counterfeit Currency Wing,
Chennai.
(Crime No.1 of 2016)

.. Respondents

Prayer: 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 Riswan Sheriff, son of Syed Dhasthagir, now confined at the Central Prison, Puzhal-II, Chennai, before this Court and to set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

For Respondents: Mr.Rajarathinam
Public Prosecutor

ORDER

[Order of the Court was made by M.JAICHANDREN, J.]

This Habeas Corpus Petition has been filed, by the wife of the detenu, praying that this Court may be pleased to direct the respondents to produce the detenu, namely Rishwan Sheriff, son of Syed Dhasthagir, confined in the Central Prison, Puzhal-II, Chennai, before this Court and to set him at liberty.

2 It has been stated that the detenu had been taken into custody, illegally, on 16.3.2016. He had been remanded in judicial custody by the learned XI Metropolitan Magistrate, Saidapet. The custody of the detenu is being extended, from time to time. It has been further stated that the XI Metropolitan Magistrate has no power or authority to extend the remand of the detenu beyond 90 days. Therefore, the extension of the remand of the detenu, from 16.6.2016 to 15.7.2016, is arbitrary, illegal and contrary to the relevant provisions of the law.

3 It has been further stated that, by an order passed by this Court, dated 23.9.2016, in CrI.R.C.No.958 of 2016, the extension of the remand in respect of a co-accused had been found to be erroneous. The said accused was granted bail with certain conditions. It has been further stated that prolonged custody of the detenu is unjust, illegal and violative of the principles enshrined under Article 21 of the Constitution of India. In such circumstances, the present Habeas Corpus Petition has been filed, by the petitioner, before this Court.

4 The learned counsel appearing on behalf of the petitioner had stated that the XI Metropolitan Magistrate, Saidapet, has no jurisdiction to try the case in question. In fact, the said Magistrate has no jurisdiction to commit the matter to any other Magistrate or Court, as the detenu has been accused of committing the offence under the provisions of the Unlawful Activities (Prevention) Act, 1967. It is only the Special Court, established to try such cases, would have the necessary jurisdiction, as per Section 16 of the National Investigation Agency Act, 2008. Further, if no Special Court had been constituted by the State Government, the power could be exercised by the Court of Session of the division in which such offence is said to have been committed, under Section 22, sub-clause (3) of the National Investigation Agency Act, 2008. It has been further stated that the detenu had been arrested and remanded in custody, on 16.3.2016. On the expiry of 90 days, the XI Metropolitan Magistrate, Saidapet would have no jurisdiction, whatsoever, to deal with the matter.

5 It had been further stated that the investigating agency had filed a report, on 14.6.2016, for extension of time to continue the investigation. However, the detenu had not been produced before the Court. Such a lapse would render the remand invalid and void in the eye of law. In fact, the report is a composite report, covering all the six accused persons. The petitioner is the second accused. The first accused had challenged the report, in CrI.R.C.No.958/2016 and had obtained a favourable order. Since the report is a composite report for all the accused persons, the same benefit should also be extended to the detenu herein. However, when a bail petition had been moved

for the detenu, the bail petition had been returned with the following note :

"As per Section 43 D of the Unlawful Activities (Prevention) Act, 1967, the period of Investigation has been extended for 30 days from 16.06.2016 to 15.07.2016, vide order passed by this court in Cr.M.P.No.1946 of 2016. Thus, how this petition is maintainable U/s.167 Cr.P.C. at this stage?

Hence, this petition U/s.167(2) (a) (ii) Cr.P.C. is returned."

Thereafter, the period of investigation had been further extended, for a period of 15 days, from 16.7.2016 to 30.7.2016. However, the detenu had not been produced before the Court while granting the extension of the period of investigation, contrary to the relevant provisions of law and the decisions of the Supreme Court.

6 The learned counsel had further stated that, from the dates noted in the counter affidavit filed by the first respondent, dated 17.10.2016, it is clear that the detenu had not been produced when the period of investigation had been extended by the court concerned. The learned counsel had relied on the following decisions, in support of his contentions :

"(a)Navalshankar Ishwarlal Dave and another Vs. State of Gujarat and others [1993 Supp (3) SCC 754]

(b)Uday Mohanlal Acharya Vs. State of Maharashtra [(2001) 5 SCC 453]

(c)State of Tamil Nadu Vs. Paramasiva Pandian [(2002) 1 SCC 15]

(d)Sayed Mohd. Ahmad Kazmi Vs. State (Government of NCT of Delhi) and others [(2012) 12 SCC 1]

(e)Union of India through C.B.I. Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav [(2014) 4 MLJ (Cr1) 323 (SC)]

(f)In re, Kunjan Nadar [(S) AIR 1955 Travancore-Cochin 74 (Vol.42, C.N.29)]"

7 Per contra, the learned Public Prosecutor had submitted that the report, dated 14.6.2016, had been filed before the XI Metropolitan Magistrate, Saidapet. The prosecution had sought further time for the completion of the investigation. The detenu had also been informed about addition of sections under the Unlawful Activities (Prevention) Act, 1967, on 29.4.2016. A copy

of the report had also been furnished to the detenu, on 26.5.2016, when he had been produced before the court for the purpose of extension of remand. Thus, it is clear that there is no infirmity in the extension of the remand of the detenu. The learned XI Metropolitan Magistrate, Saidapet, had been extending the remand of the detenu, periodically, as he possess the power to do so, up to 180 days. It could be clearly noted that such a power is vested with the Magistrate concerned, while reading the provisions of Section 43-D of the Unlawful Activities (Prevention) Act, 1967 and Sections 16 and 22 of the National Investigating Agency Act, 2008.

8 The learned Public Prosecutor had further submitted that the Government had granted sanction for the prosecution of the accused, under the Unlawful Activities (Prevention) Act, 1967, on 10.9.2016. The charge sheet had been filed, on 12.9.2016. The accused had been produced before the Sessions Court and had been remanded in custody, in accordance with the procedures established by law. He had further stated that no special court had been formed for trying such offences, till date. The learned Public Prosecutor had further submitted that the detenu had been produced before the court concerned while his remand has been extended, periodically. However, there is no necessity to produce the detenu before the court, at the time of filing of the report, seeking extension of time, for completion of the investigation. He had further submitted that the decisions cited by the learned counsel appearing on behalf of the petitioner are not be applicable to the facts and circumstances of the present case. As such, there is no illegality in the extension of remand, relating to accused, who is described as a detenu in the present Habeas Corpus Petition.

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

10 From a reading of the relevant provisions of law, especially, Sections 43-D of the Unlawful Activities (Prevention) Act, 1967, it is clear that the time limit prescribed under Section 167 of the Code of Criminal Procedure, 1973, relating to the custody of a person accused of the crime, stands extended. It has also been provided that if it is not possible to complete the investigation within the prescribed period, the Court, may, if it is satisfied with the report of the Public Prosecutor, indicating the progress of the investigation and if specific reasons are found, extend the period of detention, up to 180 days.

11 As per the counter affidavit filed by the first respondent, dated 17.10.2016, the remand prisoners, including the detenu, had been produced before the Court of XI Metropolitan Magistrate, on the following dates :

"1.4.2016, 15.4.2016, 29.4.2016, 13.5.2016,
26.5.2016, 9.6.2016, 23.6.2016, 27.6.2016,
30.6.2016, 4.7.2016, 18.7.2016, 29.7.2016,
1.8.2016, 4.8.2016, 23.8.2016, 2.9.2016,
7.9.2016, 9.9.2016, 12.9.2016, 15.9.2016,
5.10.2016."

and before the learned Principal Sessions and City Civil Court, Chennai, on 29.9.2016. Thereafter, the next hearing date had been fixed on 19.10.2016.

12 From the additional counter affidavit filed before this Court, dated 23.11.2016, it is noted that, initially, the remand of the detenu, for a period of 90 days, had expired on 15.6.2016. The detenu had been produced before the Court concerned, on 9.6.2016, and the remand had been extended till 23.6.2016. In the meanwhile, the report of the Additional Public Prosecutor, Chennai, had been filed, on 14.6.2016, for extension of the period of investigation and for extension of the remand, before the Court of XI Metropolitan Magistrate, Saidapet, Chennai. When the detenu had been produced, on 29.4.2016, through video conference, the addition of sections on the Unlawful Activities (Prevention) Act, 1967, had been informed to the detenu. A copy of the report had also been furnished to him and his signature had been obtained by the Court, on 26.5.2016, when he had been produced before the court concerned.

13 It has also been noted that Section 43-D of the Unlawful Activities (Prevention) Act, 1967, does not exclude the jurisdiction of the Magistrate from exercising the remand extension power beyond 90 days. However, the said power can be exercised upto 180 days. In fact, clause (2) of Section 167 of the Code of Criminal Procedure, 1973, states that the Magistrate to whom an accused person is forwarded under the said section, may, whether he has or has not jurisdiction to try the case, authorise the detention of the accused in custody, from time to time, as he thinks fit. The proviso to the said section makes it clear that the Magistrate may authorise the detention of the accused person beyond the prescribed period, if he is satisfied that adequate grounds exist for doing so. As such, it is clear that necessary procedures had been followed by the Magistrate concerned in extending the remand of the detenu in question.

14 The learned counsel appearing on behalf of the petitioner had contended that the extension of the period of remand by the Court of XI Metropolitan Magistrate, Saidapet,

from 16.6.2016 to 15.7.2016, is contrary to law and the decisions of this Court, as well as the Supreme Court. He had submitted that once the period of extension of remand is found to be illegal, the subsequent extension of remand would also be illegal and void in the eye of law. The learned counsel had relied on a number of decisions, including the decisions made by the Supreme Court, in support of his contentions. However, we find that the facts and circumstances of the cases referred to by the learned counsel appearing on behalf of the petitioner do not support his contentions. It is clear that the learned XI Metropolitan Magistrate had the power and the authority to extend the remand of the detenu up to the period of 180 days. The period for completion of the investigation had also been extended, based on the report filed on behalf of the prosecution. A copy of the report had also been furnished to the detenu. In such circumstances, we do not find any irregularity or illegality in the process followed by the learned XI Metropolitan Magistrate in extending the period of remand of the detenu, from time to time, up to the period of 180 days.

15 Further, no Special Court had been formed, for taking up such matters. The matter had been referred to the District and Sessions Court concerned, for further proceedings, in accordance with law. Therefore, the contention raised by the learned counsel appearing on behalf of the petitioner that the detenu had not been produced before the court at the time of submission of the report for extension of the period of investigation, cannot be accepted.

16 From the decision of the Supreme Court, in Sanjay Dutt Vs. State, through C.B.I., Bombay (I), reported in 1994 SCC (Cri) 1426, it is noted that there is no requirement of giving the accused written notice, giving reasons for the grant of extension of the period for completing the investigation. In the present case, the detenu had been informed regarding the report praying for extension of time for completion of the investigation and a copy of the report had also been served on him.

17 Further, the claim of the learned counsel appearing on behalf of the petitioner that a co-accused had challenged the report filed by the prosecution and this Court had passed an order, dated 23.9.2016, and that the same would apply to the detenu in the present case, would also fail. It is also noted that a criminal revision case had been filed by the detenu herein, before this Court, in CrI.R.C.No.994 of 2016. By an order, dated 23.9.2016, this Court had dismissed the said case, holding that there is no infirmity in the extension of the remand period, from 16.6.2016 to 15.7.2016. Therefore, the claim of the petitioner, seeking similar relief, is not sustainable.

Even if it is true that bail had been granted to the co-accused, it cannot be contended that the extension of the period of remand of the detenu in the present case is unlawful, due to breach of law, automatically. In fact, this court had merely held that it is for the accused concerned to move a bail application before the court concerned. However, in the present case, we are clear that there has been no breach of the procedures followed by the learned XI Metropolitan Magistrate, Saidapet, in extending the remand period of the detenu.

18 Therefore, the contentions raised on behalf of the petitioner have no merit. Hence, the present Habeas Corpus Petition is liable to be dismissed, as it is devoid of merits. Accordingly, the Habeas Corpus Petition stands dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Superintendent of Central Prison,
Puzhal-II,
Chennai-600 066.
 - 2.The Deputy Superintendent of Police,
CBCID,
Counterfeit Currency Wing,
Chennai.
 - 3.The Public Prosecutor,
High Court, Madras.
 4. The XI Metropolitan Magistrate, Saidapet, Chennai.
 5. -do- Through The Chief Metropolitan Magistrate,
Egmore, Chennai
- + 1 cc to M/s. R. Sankarasubbu, Advocate SR.71114

H.C.P.No.2134 of 2016

KSJ(CO)
EU 02.12.16