

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN
and

THE HONOURABLE MR. JUSTICE T.MATHIVANAN

H.C.P. No. 2245 of 2016

G.Haribabu

.. Petitioner

Vs.

1. State of Tamil Nadu,
Represented by its Secretary,
Home Department,
Fort St.George,
Chennai-600 009.
2. The Director General of Police,
Mylapore.
Chennai-600 004.
3. The Superintendent of Prison,
Central Prison,
Salem.
4. The Deputy Superintendent of Police,
Q Branch C.I.D.
Thirupathur,
Vellore District.

.. Respondents

Prayer : Petition under Article 226 of the Constitution of India, praying for issuance of Writ of Habeas Corpus to direct the respondents to produce the body and person of Palanivel, S/o.Shankar, aged 32 years now confined in central prison, Salem, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr. V.M.R.Rajentren
Additional Public Prosecutor

O R D E R

(Order of the Court was made by T.MATHIVANAN., J.)

Invoking the special original jurisdiction, this Court under Article 226 of the Constitution of India, this petition is filed to issue a direction in the nature of a Writ of Habeas Corpus directing the respondents to produce the body and person of one Palanivel, S/o.Shankar who has been confined in Central Prison, Salem, before this Court and set him at liberty forthwith .

2. Heard Mr.R.Sankarasubbu, learned counsel for the petitioner and Mr.V.M.R.Rajentren, learned Additional Public Prosecutor appearing for the respondents.

3. The petitioner herein claims to be the State Committee Member of the Centre for Protection of Civil Rights (TN) and Former General Secretary of the Organisation and as such their Organisation has been fighting for the cause of redemption from subjugation and Social Degradation and other modes of suppression.

4. From the averments of his affidavit filed in support of the petition, it is revealed that the detenu was charged for an offence under Sections 18A, 18B, 19, 20, 38 and 40 of Unlawful Activities (Prevention) Act 1967, r/w Section 120(B) of I.P.C. and was arrested and remanded to judicial custody on 02.10.2016 and subsequently confined at central prison, Salem.

5. The petitioner has sought the production of the body and person of detenu Palanivel on the following grounds:

i) On an application made by the 4th respondent herein who is the Investigating Officer in the above said case, the detenu was taken into Police custody on 06.10.2016 and while he was in police custody, his body was covered by four blankets, his eyes were tied and he was forcibly beaten up by the Q-Branch police persons and around 82 to 100 signatures were obtained from him.

ii) After completion of police custody, he was produced before the learned Judicial Magistrate, No-I, Mettur on 11.10.2016 and remanded to judicial custody on the same day. While he was in prison, the prison authorities had searched him forcibly and inhumanly without even a single piece of dress of his person. He was also forcibly handled and attacked by prison authorities.

iii) He has been confined in solitary confinement, which is a punishment cell and he was not even provided with proper food and basic needs. Equally he was not allowed to mingle with other under trial prisoners. The said solitary confinement had caused him grave mental agony and torture. The main allegation against the 3rd respondent who is the Superintendent of Prison, Central Prison, Salem, is that he did not follow any procedure to maintain human dignity.

iv) The detenu's life is in danger as the 3rd respondent had violated Article 21 of the Constitution of India.

6. On hearing the submissions made by Mr.R.Sankarasubbu, learned counsel appearing for the petitioner, this Court on 30.11.2016, had directed the Secretary, District Legal Services Authority, Salem District to visit the central prison at Salem and conduct an enquiry with regard to the allegations made by the petitioner.

7. The Secretary, District Legal Services Authority, Salem was also directed to file a report before this Court after conducting an enquiry on or before 15.12.2016. Thereafter, the matter stood adjourned to 19.12.2016.

8. In the interregnum the respondents 3 and 4 viz., the Superintendent of Central Prison Salem and the Deputy Superintendent of Police, Q Branch CID, Tirupattur, Vellore District had filed their respective counter affidavits, wherein, they have strenuously refuted all the allegations made against them by the petitioner in his affidavit filed in support of the petition.

9. On perusal of the records we are able to find that on an information given by one Mr.P.Chandramohan, Inspector of Police, Q-Branch CID, Coimbatore District, a case in crime No.1 of 2016 seems to have been registered on 30.09.2016 on the file of 'Q' Branch CID, Salem District against the detenu Palanivel, S/o.Sangu @ Shankar alleging that he had committed the offences punishable under sections 18, 18A, 18B, 19, 20, 38 and 40 to the Unlawful Activities (Prevention) Act 1967 and after registration of the case, the 4th respondent herein had taken up the case for investigation.

10. It is also revealed from the materials placed before us, that at about 7.15 p.m., on the same day, the 4th respondent herein viz., Deputy Superintendent of Police, Q-Branch CID, Tirupattur, Vellore District had arrested the detenu at Chinna park, Mettur and thereafter, he was remanded and lodged at Central Prison, Salem under Judicial custody on 02.10.2016.

11. In this connection Mr.V.M.R.Rajentren, learned Additional Public Prosecutor for the respondents has submitted that admittedly on an application made by the 4th respondent who is the Investigating Officer in this case, the learned Judicial Magistrate No-I, Mettur had ordered police custody for 5 days on 06.10.2016.

12. He has further maintained that the detenu Palanivel is an absconding accused against whom a Non-Bailable Warrant was issued by the I Additional Sessions Judge, Salem as he had been facing charges under Section 302 (2 counts) and 201 IPC in a Sessions case in S.C.No.217 of 2009 which is pending trial and he is also a

proclaimed offender in the case in S.C.No.50 of 2013 which is pending against him on the file of the Assistant Sessions Court, Periyakulam, Theni District for the alleged offences under Sections 120-B I.P.C. 143, 144, 122, 124A, 216 I.P.C. r/w 34 and 149 of IPC and also under Sections 3 r/w 25(1)(b)(a) and 7 r/w 25(1)(a) of Arms Act 1959, Section 4(a) and 5 of Explosive Substances Act, 1908 and Section 17(i) and (ii) of Criminal Law Amendment Act, 1908. He has also added that on the source of information, he was arrested at Chinna Park, Mettur, Salem on 30.09.2016 by a special party of 'Q' Branch CID led by the Inspector of Police, 'Q' Branch CID, Coimbatore District.

13. He has also argued that the learned Judicial Magistrate, No-I, Mettur had ordered police custody for 5 days from 06.10.2016 to 11.10.2016 and during the police custody, the detenu was kept at Salem Armed Reserve Police Rest house, under proper guard and was subjected to medical examination, daily by a Medical Officer of the Government Medical College Hospital, Salem. Thereafter, the accused was produced before the learned Judicial Magistrate No.I Mettur on 11.10.2016. At the time of his production before the said Magistrate, he had not made any complaint of ill-treatment by the police. However, the detenu had represented before the learned Judicial Magistrate that he had not given any confessional statement and not signed in any paper. His statement was recorded by the learned Judicial Magistrate and remanded him to judicial custody till 24.10.2016.

14. Insofar as the allegation made against the 3rd respondent is concerned, the learned Additional Public Prosecutor has submitted that since the detenu Palanivel is being a naxalite prisoner and involved in sensational cases, for the security reason, he was separated from other ordinary prisoners as per the Tamil Nadu Manual Volume-II Rule No:214. He has also submitted that the detenu's brother one Annamalai S/o.Shankar, (Remand Prisoner No.2959) who was lodged in 9th block of central prison, Salem was allowed to meet the detenu whenever he requested. He has also adverted to that on 11.10.2016, while he was admitted in the prison, the detenu was searched by the prison authorities as per Rule No.194 of the Tamil Nadu Prisoner Manual Rule Volume-II. When he was searched he had not co-operated with the searching officer as he had strongly objected for searching. In this connection, the Jailor had made a report in his report book and the 3rd respondent had enquired about the complaint and thereafter, had warned the detenu severely and instructed the other officers of the prison to give him proper counselling through the prison psychologist.

15. According to 3rd respondent, the detenu was never subjected to physical harassment and his signatures were never obtained in any blank papers. If it was done so he would have complained before the learned Judicial Magistrate at the time of his production.

16. We have perused the report submitted by the Secretary, Legal Services Authority, Salem District. From his report dated 12.12.2016 it is revealed that the detenu Palanivel on enquiry had stated that, at the time of Police Custody he was kept in Armed Forces Camp at Salem, and that the police had threatened him and enticed him to admit the friendship of the persons shown by them in the photograph but he had refused to admit the friendship of those persons. He had also stated that the police had taken his signatures in blank papers, but he was not beaten up at the time of police custody in Armed Forces as alleged.

17. The report of the Secretary, District Legal Services Authority, Salem also reveals that the prison authorities had searched the detenu by removing his entire clothes despite his objection.

18. On enquiry, the detenu had not stated that he was attacked by prison authorities. The prison authorities had also stated that at the time of admission it is their duty to search the remanded prisoners as per the Prison Manual likewise palanivel was searched and there was no such force and inhumanly search.

19. With regard to the allegations of the solitary confinement the Secretary, District Legal Services Authority, Salem has stated that on enquiry the detenu Palanivel had stated that at the time of admission he was kept in the 7th block in which he was kept in separate cell and in day time he was allowed to mingle with other remanded prisoners who were kept in 7th block. It is also revealed that only 7 to 9 remanded prisoners were available in that block and that he was unable to meet his brother when he was in 7th block for about one month. Thereafter, the detenu was shifted to 9th block. The Secretary, District Legal Services Authority, Salem has also stated that in 9th block, the detenu was kept with other remanded prisoners and allowed to mingle with others and able to meet his brother Annamalai in the 9th block and that there was no such solitary confinement. On enquiry, the detenu's brother Annamalai had also disclosed that, often he used to meet his brother.

20. The Secretary, District Legal Services Authority, Salem at the conclusion paragraphs has stated that there is no specific allegation against the prison authorities.

21. We have carefully perused the allegations made by the petitioner in his affidavit along with other materials which were placed before us. We have also given our careful consideration to the report submitted by the Secretary, District Legal Services Authority, Salem.

22. Having regard to all the relevant facts and circumstances, we find that the allegations made by the petitioner are baseless and

proved to be fallacious. Keeping in view of the above fact, we have find that the petition itself is devoid of any merit and therefore, liable to be dismissed.

Accordingly, this petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Secretary,
Home Department,
Fort St.George,
Chennai-600 009.

2. The Secretary
District Legal Service Authority,
Salem District.

3. The Director General of Police,
Mylapore.
Chennai-600 004.

4. The Superintendent of Prison,
Central Prison,
Salem.

5. The Deputy Superintendent of Police,
Q Branch C.I.D.
Thirupathur,
Vellore District.

6. The Public Prosecutor,
High Court, Madras.

7. The Section Officer,
Criminal Section,
High Court, Madras.

BR(CO)
RS(19/01/2017)

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