



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2016

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THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN

HCP(MD).No.1251 of 2016

P. Rajendran

.. Petitioner

Versus

1. The State Rep. By
The Secretary to Govt. of Tamil Nadu,
Department of Home Secretary,
Fort St. George,
Chennai.

2. The Superintendent of Prison,
Central Prison,
Trichy.

2. The Inspector of Police
Therkuvassal Police Station
Madurai.

.. Respondents

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a writ of Habeas Corpus to quash the sentence awarded in S.C.No.184 of 2000 dated 16.10.2000, on the file of the II Additional Sessions Judge, Madurai and confirmed in Crl.A.No.194 of 2001 dated 04.04.2008 and set at liberty as the detenu by name P. Annadurai S/o Perumal Thevar detained in Central Prison, Trichy under the Juvenile Justice (Care and Protection of Children) Act.

For Petitioner : Mr. M. Maran

For Respondents : Mr. A. Ramar, APP

ORDER

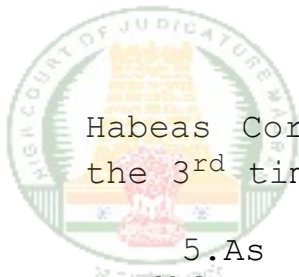
[Order of the Court was made by M.V.MURALIDARAN, J.,]

This is the 3rd Habeas Corpus Petition filed by the brother of life convict / Accused No.4 in S.C.NO.184/2000 dated 16.10.2000 on the file of the II Additional Sessions Judge, Madurai has sought for a writ of Habeas Corpus Petition to quash the sentence imposed in the above said Judgment contenting that as per the school record sheet issued by Head Mistress, CSI Primary School, Therkuvasal, Madurai-7, the date of birth of his brother Annadurai was on 15.03.1982 and that as on the date of commission of offence i.e., on 25.12.1999, his brother was aged 17 years 19 months and 10 days and hence the detenu has not completed the age of 18 years at the time of commission of offence. Therefore, the petitioner has contended that the detenu is entitled to have the benefit of Sec.17(A) of Juvenile Justice (Care and Prevention of Children) Act. Therefore the Learned Counsel for the petitioner has contended that as per Section 9 (3) of the Act at the time of commission of offence, if the court found that a person was a child, it should be duty of the court to forward the child to the Board for passing appropriate order and to the sentence, if any passed by the court, shall be deemed to have no effect.

2.On the other hand, the Learned Additional Public Prosecutor argued that the issue involved in this Habeas Corpus Petition has already been decided by this Hon'ble Court in the earlier Habeas Corpus Petitions. Therefore, the Learned Additional Public Prosecutor requested this Hon'ble Court; this issue need not be gone into once again.

3.We have heard Mr.M.Maran, learned counsel appearing for the petitioner and Mr.A.Ramar, learned Additional Public Prosecutor, appearing for the respondents. According to the petitioner, at the time of commission of the offence punishable under section 148, 341, and 302 of IPC by the detenu and others, the detenu was a minor and he did not complete the age of 18 years. According to the petitioner, the date of birth of detenu is 15.03.1982 and to substantiate his case, he has filed school record of the detenu.

4.It is seen from the records, the detenu has earlier filed two Habeas Corpus Petition in H.C.P.No.985 of 2010 and H.C.P.No.198/2014 before this court for the very same relief through his mother Chellathai. The first H.C.P.No.985 of 2010 was dismissed as withdrawn by order dated 21.05.2010. The order of dismissal of the 1st Habeas Corpus Petition was suppressed by the mother of the detenu in her second H.C.P.No.198 of 2014. The second H.C.P.No.198 of 2014 was also dismissed with cost of RS.5,000/- by this Hon'ble Court after considering the case of the detenu in detail by order dated 09.07.2014. While so, the present



Habeas Corpus Petition is filed by the brother of the detenu by the 3rd time for the very same relief.

5.As stated supra, the earlier two Division Benches of this Hon'ble Court have dismissed the Habeas Corpus Petitions filed by the mother of the detenu. In fact, the 2nd H.C.P.No.198/2014 was dismissed by this Court after considering the issue of date of birth of the detenu and ultimately dismissed the same with cost of Rs.5,000/- by holding that the conduct of the petitioner i.e., mother of the detenu is not good.

6.In view of the foregoing reason, we need not once again concentrate and waste our energy on the very same issue which was already decided and settled by the earlier Division Bench of this Hon'ble Court. It is a settled principle of law that one must approach the court with clean hands. In the present case on hand, the detenu having failed in his earlier attempts, have come forwarded with the present H.C.P and it shows that he has not come with clean hands. The people still have faith in the judiciary and they are believing that their last asylum is court. The petitioner should not take asylum of this Hon'ble Court by filing continuous vexatious H.C.Ps.

7.In fine, this Habeas Corpus Petition is dismissed. However, considering the situation of the petitioner and the detenu, we don't want to impose cost once again.

8.Before parting with this case, we want to give a message to the society. There are so many unsettled issues to be settled in our country and the peoples should concentrate on those issues. Especially at present, we are facing water crisis in all over the country and we should think about our future generation. What we are going to leave for the next generation is a million dollar question. It is our request and message to the younger generation to preserve nature and also to preserve water bodies which our forefathers have dedicated to this nation without any expectation. Right from the freedom struggle, the advocate's community played vital role and has saved our nation from the British Rulers along with common people. So, we hope that our advocate community with join hands of people would preserve nature and eradicate poverty in our country. With this message we conclude.

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar



To

- 1.The Superintendent of Prison
Central Prison, Trichy.
- 2.The Inspector of Police,
Therkuvasal Police Station,
Madurai.
- 3.The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Secretary to Government of Tamil Nadu,
Department of Home Secretary,
Fort Saint George, Chennai-9
- 5.The IInd Additional Sessions Judge, Madurai

+One cc to Mr.M.Maran, Advocate, SR.No.52439

vsa/skn

RL/7C/4P/SKN/27.3.2017

HCP(MD).No.1251 of 2016

15.09.2016