



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.09.2016**

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
AND
THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

H.C.P. [MD] .No.720 of 2016
and
CRL.MP (MD) .Nos.4899, 5356, 5357 and 6649 of 2016

Kanniammal : Petitioner

Vs.

- 1.The Director General of Police,
DGP Office, Chennai 4.
- 2.The Commissioner of Police,
Madurai City Police, Madurai 7.
- 3.The Superintendent of Police,
Kanyakumari District, Nagercoil,
Kanyakumari District.
- 4.The Inspector of Police,
Special Branch Crime Investigation Department [SBCID],
District Police Office,
Kanyakumari District.
- 5.The Inspector of Police,
Anna Nagar Police Station,
Madurai.

: Respondents

PRAYER: Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus directing the respondents 1 to 3 to produce the detenu, namely, Sulaiman Sait, S/o.Abul Hasan, aged 32 years, before this Court and set him at liberty.

For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.A.Ramar
Additional Public Prosecutor

**O R D E R**

[Order of the Court was made by **S.NAGAMUTHU, J.**]

The petitioner is the mother of one Mr.Sulaiman Sait, S/o.Abul Hasan, aged 32 years, [hereinafter referred to as "the detenu"]. According to the petitioner, the detenu was doing business at Chennai and other places. It is her grievance that for no fault of the detenu, the police used to foist false cases against him. Therefore, in order to get relief, she filed W.P.(MD).No.16070 of 2014, against the Inspector of Police, Tenkasi and the other police officials and the same is pending. She has further stated that recently, the detenu was implicated as an accused in Crime No.401 of 2015 for the offences punishable under Sections 147, 148, 323 of the Indian Penal Code and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. He was granted Anticipatory Bail by a learned Single Judge of this Court. In pursuance of the same, he was released on bail. The petitioner has further stated that as per the condition imposed on him, the detenu was appearing before the police.

2. Alleging that the detenu had been falsely implicated, the petitioner sent a complaint to the Hon'ble Chief Minister's Cell through E-mail. On account of the same, the third respondent got wild against the detenu. It is further stated that on 15.10.2015, at about 10.00 AM, the detenu had gone to Tenkasi Police Station to comply with the condition imposed on him. He was detained at the Police Station for some time. Thereafter, he was not able to go back. The petitioner was not aware of the same. She went in search of the detenu at the Police Station. But, she was informed that the detenu was taken by the fourth respondent along with policemen in a TATA Sumo Car, bearing Registration No.TN-74-G-0428. Thereafter, according to the petitioner, she tried to see the detenu in the Police Station. But, she was not allowed. Therefore, the petitioner made a representation on 15.10.2015. Thereafter, she has filed a Habeas Corpus Petition before this Court. Immediately, after the filing of this Habeas Corpus Petition, the detenu was remanded to judicial custody in connection with some cases in Kanyakumari District. Thereafter, he was granted bail in those cases and as per the condition imposed on him, he was appearing before the learned Judicial Magistrate No.V, Madurai, every day.

3. On 10.06.2016, at about 10.45 AM, the detenu, along with one Mr.Natheem, went to the Court of learned Judicial Magistrate No.V, Madurai, to comply with the condition imposed on them. It is stated that in front of the District Court Campus at Madurai, the detenu was attacked by 20 persons and the said persons took them in a TATA Sumo Car and fled away from the scene of occurrence. One Mr.Sulthan Basha, who witnessed the occurrence, immediately



informed the same to the petitioner. Thereafter, the petitioner sent a complaint in this regard. Since the detenu was not let off and since his whereabouts were not known, she sent a complaint to the police and finally, she filed the present Habeas Corpus Petition, on 11.06.2016.

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4. On 11.06.2016, a Special Sitting was formed and a Division Bench of this Court directed the learned Government Advocate [Criminal Side] to take notice and also further directed the Registry to serve notice on the respondents 2 to 4 by a Special Messenger forthwith, indicating that the Habeas Corpus Petition would be taken up for hearing at 03.00 PM, on the same day.

5. On 13.06.2016, when the Habeas Corpus Petition came up for hearing, this Court passed the following order:-

"This Court passed an order at 02.45 p.m., on 11.06.2016, directing the Registry to serve notice on the respondents 2 to 5 forthwith by special messenger. Thereafter, at 03.10 p.m., Mrs.S.Prabha, learned Government Advocate (Criminal side) appeared before one of us (**K.K.SASIDHARAN, J.**) along with the counsel for the petitioner and informed that she has already intimated the respondents 3 to 5 about the order passed by this Court to produce the detenu at 10.30 a.m., on 13.06.2016. The learned Government Advocate (Criminal side) wanted the earlier order noting her non-appearance to be recalled. The learned Government Advocate (Criminal side) was informed that necessary order to record her subsequent appearance would be passed on 13.06.2016.

2. The Registrar (Judicial) is directed to submit a note indicating the time at which and the day on which the notices were served on the respondents 2 to 5 through special messenger. The report should be submitted during the course of the day.

3. The status report filed by the Inspector of Police, Aralvaimozhi Police Station, Kanyakumari District, is perused and taken on record.

4. The Superintendent of Central Prison, Palayamkottai, is directed to produce the detenu, by name, Sulaiman Sait, S/o.Abul Hasan, accused in Crime No.201 of 2016 before us at 10.30 a.m., on 14.06.2016.

5. The case file produced by the Inspector of Police, Aralvaimozhi Police Station, Kanyakumari District is seized and is directed to be kept in a sealed cover.

6. Post on 14 June, 2016".

On 14.06.2016, this Court passed the following Order:-

<https://hcservices.ecourts.gov.in/HCServices/> C.Arul Jon Wisely Raj, Inspector of Police, Armed Reserve, Tirunelveli City produced the detenu, by



name Sulaiman Sait, S/o.Abul Hasan, before us, in compliance with the order dated 13 June, 2016. We have examined the detenu and recorded his statement. We have also passed a separate order in the matter.

2. This order pertains to the treatment to be given to the detenu. The detenu, in his statement, stated that he was brutally assaulted by the police and he sustained multiple injuries on both hands and legs and back. The detenu further informed us that his bone is broken and he is not in a position to walk properly. According to the detenu, he was not given proper treatment and in view of the compulsion of the police, he was not admitted at the Government Hospital, Palayamkottai.

3. We direct the Superintendent of Central Prison, Palayamkottai, to produce the detenu, by name, Sulaiman Sait, S/o.Abul Hasan, before the Dean, Madurai Government Rajaji Hospital, Madurai, forthwith. Since the Superintendent of Central Prison is not present in Court today, the detenu would be taken to the hospital by Thiru.A.Varadharajan, Assistant Commissioner of Police, Crime, Palayamkottai and Thiru.C.Arul Jon Wisely Raj, Inspector of Police, Armed Reserve, Tirunelveli City.

4. The Dean, Madurai Government Rajaji Hospital, Madurai, is directed to admit the detenu in the Madurai Government Rajaji Hospital, Madurai and give him necessary treatment. The Dean is, further, directed to submit a report with regard to the injuries sustained by the detenu, treatment given and his present health condition. The report should be filed before this Court in a sealed cover on 20 June, 2016.

5. Post the matter on 20 June, 2016".

6. On 22.06.2016, this Court passed the following order:-

"Mrs.S.Prabha, learned Government Advocate (Criminal side) appeared before one of us (**K.K.SASIDHARAN, J.**) at 03.10 p.m., on 11 June, 2016 and informed that she has already intimated the respondents 3 to 5 with regard to the order passed by this Court to produce the detenu at 10.30 a.m., on 13 June, 2016.

2. Mrs.S.Prabha, learned Government Advocate (Criminal side) is directed to file affidavit indicating the time and date on which each of the respondents were intimated about the order passed by us at 02.45 p.m., on 11 June, 2016. The affidavit should be filed on or before 29 June, 2016.

7. On the same day, this Court passed yet another order, which

<https://hcservices.ecourts.gov.in/hcservices/> :-

"The Registry is directed to provide a copy of the



affidavit given by the detenu Sulaiman Sait, to the respondents 2 to 5, so as to enable them to file the response by 04 July, 2016.

2. The learned Judicial Magistrate, Boothapandi, is directed to produce the entire documents including the First Information Report and the remand report in Crime No.201 of 2016 on the file of Inspector of Police, Aralvaimozhi Police Station. The documents should be sent to this Court by way of a special messenger, so as to reach here, by 29 June, 2016.

3. Post the Habeas Corpus Petition on 04 July, 2016".

8. On 04.07.2016, when the Habeas Corpus Petition came up for hearing, this Court passed the following Order:-

"We have perused the counter-affidavits filed by the Commissioner of Police, Madurai City, Superintendent of Police, Kanyakumari District and the Inspector of Police, Aralvaimozhy Police Station, Kanyakumari District. Even though the above referred respondents have dealt with the issues relating to the arrest of the detenu, the fact remains that there is no mention about the order passed by this Court on 11 June, 2016, directing production of the detenu before us on 13 June, 2016.

2. The above referred respondents are directed to file a better affidavit indicating the time and date of receipt of the information with regard to the order passed by this Court at 03.00 p.m., on 11 June, 2016. In short, they should specifically state as to whether they have received the above information and if so, the time and date and the person who gave the information. The affidavit shall be filed on or before 12 July, 2016".

9. On 04.07.2016, this Court passed the following Order:-

"We have perused the counter affidavits filed by the Commissioner of Police, Madurai City, the Superintendent of Police, Kanyakumari District and the Inspector of Police, Aralvaimozhy Police Station, Kanyakumari District. Even though the above referred respondents have dealt with the issues relating to the arrest of the detenu, the fact remains that there is no mention about the order passed by this Court on 11 June 016, directing the production of the detenu before us on 13 June 2016.

2. The above referred respondents are directed to file a better affidavit indicating the time and date of receipt of the information with regard to the order passed by this Court at 03.00 PM, on 11 June 2016. In short, they should specifically state as to whether they have received the above information and if so, the time



and date and the person who gave the information. The affidavit shall be filed on or before 12 July 2016.

Post on 13 July 2016."

10. On 13.07.2016, when the Habeas Corpus Petition came up for hearing, there was no representation on behalf of the petitioner and therefore, the case was adjourned to 08.08.2016, on which date, the case was further adjourned to 07.09.2016. Thereafter, on 07.09.2016, the Habeas Corpus Petition was listed before this Bench. On 07.09.2016, at the request of the learned counsel for the petitioner, the case was adjourned to 15.09.2016, on which date also, at the request of the learned counsel for the petitioner, the case was adjourned to 19.09.2016.

11. Finally, today, the Habeas Corpus Petition came up for hearing. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the State and we have perused the records carefully.

12. Referring to the instances referred to hereinabove and the statement of the detenu, which he gave in writing before this Court when he was produced, the learned counsel for the petitioner would submit that the detenu was detained illegally from 10.06.2016, until he was produced before the Court for judicial remand on 12.06.2016, at 02.30 AM.

13. In the counter filed by the Superintendent of Police, Kanyakumari District, it is stated that the detenu was not taken into illegal custody on 10.06.2016, as it is alleged by the petitioner and he was taken into custody only on 11.06.2016, at 10.00 PM, in connection with the case in Crime No.201 of 2016 under Sections 294(b), 387 and 506(ii) of the Indian Penal Code and Section 25(1)(b)(4) of the Indian Arms Act. He has further stated that he was not manhandled or tortured, while in custody. The detenu was produced before the learned Judicial Magistrate, Boothapandy, within 24 hours from the time of arrest and thereafter only, he was remanded to judicial custody. From that time onwards, he was lodged in Central Prison, Palayamkottai. Thus, according to the Superintendent of Police, the allegation made by the petitioner is false.

14. The learned counsel for the petitioner would submit that in fact, the detenu was taken into custody only on 10.06.2016 and thereafter, he was falsely implicated in the case, after the filing of the present Habeas Corpus Petition and then, he was produced before the learned Judicial Magistrate. The learned counsel would point out that when the detenu was produced before the learned Judicial Magistrate, he told the Magistrate that he was brutally attacked by the police. The medical records pertaining to the detenu show that he had sustained some injuries.



15. However, the learned Additional Public Prosecutor, by referring to the counter, filed by the third respondent, would submit that the detenu was not illegally detained and he was not attacked at all. Referring to Paragraph No.14 of the counter filed, he would submit that the detenu was involved in as many as 11 cases, including a case of murder, two cases of attempt to murder, a case under the Extensive Substances Act and for other various offences. He would further submit that in Crime No.461 of 2007, on the file of the Tenkasi Police Station, he was involved in a triple murder case. Thus, according to the learned Additional Public Prosecutor, he is not knew to the Court proceedings and that is how, he has made such a false statement before the learned Judicial Magistrate.

16. We have considered the above submissions.

17. This Habeas Corpus Petition has been filed on the allegation that the detenu was illegally detained by the police from 10.06.2016 onwards. As-on-today, the detenu is in judicial remand, in pursuance of the judicial order passed by the learned Judicial Magistrate concerned. Therefore, question of setting him at liberty at this stage does not arise. The question as to whether the detenu was taken into custody, illegally, on 10.06.2016, remains to be a disputed question of fact, because it is alleged by the petitioner and the detenu that he was illegally detained from 10.06.2016 onwards. It is seriously disputed by the respondents. Though it is alleged by the petitioner and the detenu that the detenu was manhandled by the police and sustained injury, the respondents dispute the same. Simply on the basis of *ipse dixit* statement of the detenu, this Court cannot rush to the conclusion that the detenu was illegally detained and he was brutally attacked by the police and the same needs to be resolved only on evidence by the competent forum. This Course is not possible in a Habeas Corpus Jurisdiction. Therefore, we are unable to act on the statement made by the detenu that he was illegally detained and brutally attacked by the police. We do not say that the said allegation made by the petitioner and the detenu is false. Neither we say that the stand of the police is false. We only say that we will not go into the disputed questions of fact, because, they need to be resolved only by letting in sufficient evidence. We leave all these disputed questions of fact open.

18. Now, turning to the argument advanced by the learned counsel for the petitioner that the detenu has been falsely implicated in the case in Crime No.201 of 2016, we restrain ourselves from expressing any opinion, because, it requires a thorough investigation and on completion of investigation, it is for the jurisdictional Court to go into the said question. We cannot go into the said question, at this stage. Therefore, the

