

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1707 of 2017

A.Aruna

... Petitioner

vs.

- 1.The Additional Director General of Police and
Inspector General of Prisons,
Gandhi Irvin Salai,
Egmore, Chennai-600 008.
 - 2.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai-600 066.
 - 3.The Superintendent of Prisons,
Central Prison, Vellore.
- ... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, for a direction to the respondents to produce the petitioner's husband Somu alias Somasundaram, Son of Subramani, aged 43 years, now confined in Central Prison, Vellore, before the Hon'ble Court and to re-transfer her husband from Central Prison, Vellore, to Central Prison, Puzhal, Chennai.

For Petitioner : Mr.M.Radhakrishnan
for Mr.P.Pugalenthi

For Respondents : Mr.V.M.R.Raendtran,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by RAJIV SHAKDHER, J.]

1. The only prayer made in the petition is for a direction to the respondents for production of one Somu @ Somansundara, Son of Subramani.

1.1. The averments made in the petition disclose that the petitioner is the wife of the aforementioned prisoner, i.e.,

Somu and that, the said Somu stands incarcerated in Central Prison, Vellore.

2. Upon notice in the petition being issued, a counter affidavit has been filed by the second respondent.

2.1. A perusal of the counter affidavit shows that the petitioner's husband Somu, having been convicted in S.C.No.87 of 2003 for the offences under Sections 302, 205 read with 102, 387, 347, 364 and 301 of IPC, is serving a life sentence.

2.2. There is also reference to the fact that via judgement dated 06.10.2007, passed by this Court in Criminal Appeal No.698 of 2004, the sentence of life imprisonment against the petitioner's husband stands confirmed.

3. In so far as the transfer of the petitioner's husband from Central Prison, Puzhal, Chennai, to Central Prison, Vellore, is concerned, the only averment made is that the transfer took place on account of "administrative reasons". In support of this submission, a reference is made to Rules 568 and 570 of the Tamil Nadu Prison Rules, 1983 (in short, "1983 Rules").

4. Counsel for the petitioner says that the prayer for re-transfer of the petitioner's husband became necessary, on account of the fact that the petitioner has undergone heart surgery, and therefore, she would find it difficult to exercise her visiting rights, if, her husband is lodged in Central Prison, Vellore.

4.1. It is also the submission of the counsel for the petitioner that, since, the petitioner has preferred an appeal against the judgement of this Court, which is pending adjudication in the Supreme Court, in terms of Rule 572, no transfer of petitioner's husband could have taken place to any other prison.

5. Mr.V.M.R.Rajentran, Additional Public Prosecutor, on the other hand, relied upon the counter affidavit filed by the second respondent, in support of his submissions. Furthermore, learned Additional Public Prosecutor, though, placed reliance on Rule 568 (vii) and 570 of the 1983 Rules, to drive home his stand that the transfer of the petitioner's husband to Central Prison, Vellore, was in order.

6. We have heard the learned counsel for the parties and perused the record.

7. Having regard to the submissions advanced before us and the state of the record, it would be relevant to extract the provisions of Rule 568 and 570 of the 1983 Rules :

"..... 568. Grounds, reasons and circumstances of transfer :- Prisoners may be

transferred from one prison to another for the following reasons, namely :-

- (i).For custody and treatment in a suitable institution in accordance with the classification, procedure ;
- (ii).For attendance in Court for the purpose of standing trial, or giving evidence;
- (iii).On medical grounds;
- (iv).On humanitarian grounds, in the interest of their rehabilitation;
- (v).For post-release vigilance by the police;
- (vi).For providing essential services;
- (vii).On grounds of security, expediency or any other grounds; and
- (viii).For other special reasons, if any....."

"..... 570. Powers of Inspector-General -
(1) The Inspector-General subject to the order and under the control of the Government, is authorised to sanction the transfer from one prison to another within the State of such prisoners as are referred to in Section 29 of the Prisons Act, 1900 (Central Act III of 1900) except those under sentence of death....."

7.1. A perusal of the aforementioned Rules would show that the reason cited by the respondents does not, strictly speaking, fall in any of the grounds mentioned in Rule 568. The argument that the ground given, that is, "administrative reasons" would fall in clause (vii) of the Rule 568, could, possibly, have been, accepted disregarding the nomenclature given, if, it was supported by the material available on record.

7.2. A perusal of clause (vii) of Rule 568, indicates that the prisoner can be transferred on the grounds of security, expediency or any other ground. Even, if, we were to accept that the "administrative reasons" would come within the ambit of "any other ground", it would be incumbent on the respondents to furnish the relevant material to the Court to justify the transfer of the prisoner.

7.3. As noted above, except for vague reason that the prisoner, i.e., Somu, has been transferred for "administrative reasons", no material has been placed on record as to how such a conclusion was reached by the authority concerned. There is nothing to show that his conduct or any other expediency faced by the respondents propelled his transfer to Central Prison, Vellore.

8. In so far as the stand taken by the respondents that the prisoner can be transferred by the Inspector-General of Police in exercise of powers conferred upon him under Rule 570, in our view, Rule 570 has to be read along with Rule 568. Otherwise, the Inspector-General would be conferred with untrammelled and unbridled powers making it susceptible to be struck down under Article 14 of the Constitution.

9. Furthermore, as has been contended by the learned counsel for the petitioner, the impact of Rule 572¹ has also to be taken into account. If, the said Rule is taken into account, the petitioner's husband could not have been transferred till such time the period for lodging an appeal had expired or until the result of the appeal is known.

10. It is not disputed before us by Mr.V.M.R.Rajentran, Additional Public Prosecutor, that an appeal has been lodged by the petitioner with the Supreme Court, which is pending adjudication.

11. Therefore, bereft of the relevant material as to what occasioned the transfer of the petitioner's husband from Central Prison, Chennai, to Central Prison, Vellore, and in the teeth of Rule 572, the impugned action cannot be sustained.

12. Given the foregoing reasons, the respondents are directed to repatriate the petitioner's husband Somu @ Somasundaram, Son of Subramani, to the Central Prison, Chennai.

13. The aforesaid direction will be given effect to within fifteen (15) days from the date of receipt of a copy of this order.

14. The petition is, accordingly, disposed of in the aforementioned terms.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ga/gg

To

1.The Additional Director General of Police and
Inspector General of Prisons,
Gandhi Irvin Salai,
Egmore, Chennai-600 008.

1 572. Transfer pending appeal - The prisoners shall not ordinarily be transferred until the expiry of the period allowed for appeal, or until the result of their appeal is known.

2.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai-600 066.

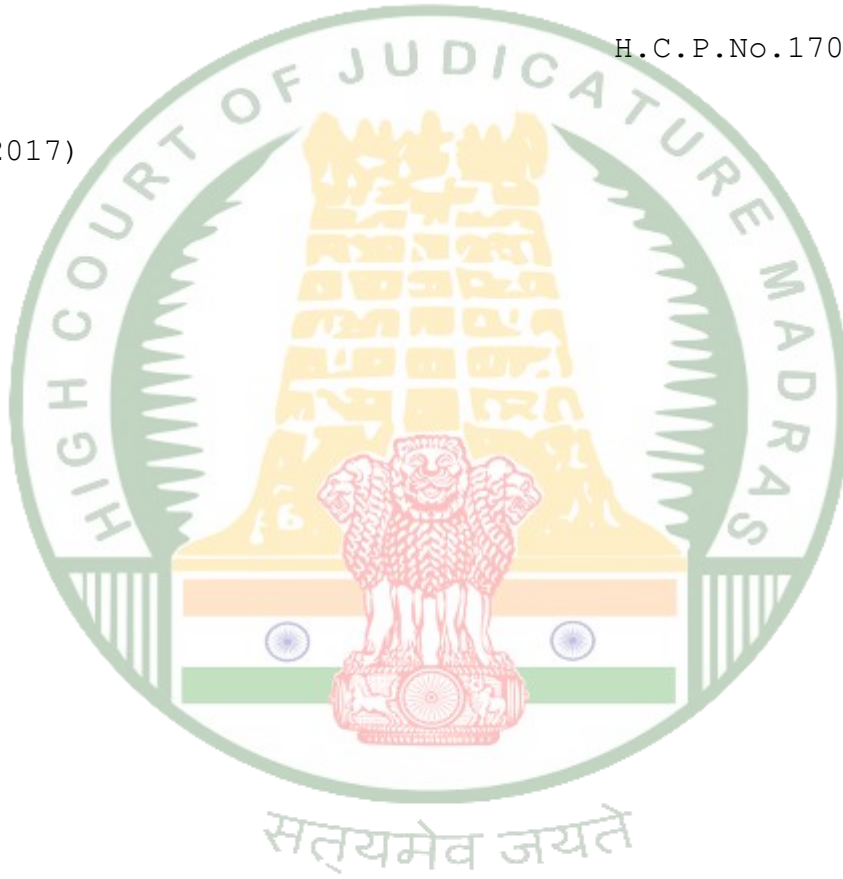
3.The Superintendent of Prisons,
Central Prison, Vellore.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Pugalenth, Advocate, S.R.No.71891

H.C.P.No.1707 of 2017

CP(CO)
CA(24/10/2017)



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