

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.10.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDER
and
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2018 of 2017

S.Kalaiselvi

... Petitioner

Vs.

1. Union Territory of Puducherry rep. by
The Chief Secretary to Government,
Government of Puducherry,
Secretariat, Puducherry-605 001.
2. The Secretary to Government (Home),
Government of Puducherry,
Secretariat, Puducherry-605 001.
3. The District Magistrate-cum-District Collector,
Office of the District Collector,
Government of Puducherry,
Puducherry.
4. The Director General of Police (DGP),
Office of the Director General of Police,
Puducherry Police Department,
Puducherry.
5. The Jail Superintendent of Police,
Central Prison, Kalapet,
Puducherry.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the fifth respondent to produce the detenu namely, Seenu @ Seenuvasan, S/o.Subramani, before this Court who has been unlawfully and illegally detained by the fifth respondent, at the Central Prison, Kalapet, Puducherry, and set him free at liberty and consequently, direct the fifth respondent to pay compensation to the detenu for deprivation of his fundamental right namely Right to Life and Personal Liberty Guaranteed under Article 21

of the Constitution, at the hands of the fifth respondent from 13.10.2017 to till today.

* * *

For Petitioner : Mr.Prakasah Adiapadam

For Respondents : Mr.Baratha Chadravarthi
Addl. Public Prosecutor (Puducherry)

O R D E R

(Order of the Court was made by RAJIV SHAKDER, J)

1. Issue notice. Mr.Baratha Chadravarthi, Additional Public Prosecutor (Puducherry) accepts notice on behalf of the respondents/Union of Puducherry.

2. The grievance of the petitioner before us, is that, despite the sentence imposed on her husband/the detainee being modified to the extent of period undergone, vide the direction contained in the judgement of this Court dated 13.10.2017, passed in CrI.R.C.No.83 of 2004, the detainee/Mr.Seenu @ Seenuvasan has not been released by the respondents.

2.1. To be noted, the petitioner's husband (i.e., the detainee) was convicted for offences, inter alia, under Section 376(2)(g) read with 34 IPC, in S.C.No.79 of 2003, vide judgement dated 10.03.2006, passed by the learned Assistant Additional Sessions Judge-cum-Chief Judicial Magistrate (in short "CJM"). Being aggrieved, the detainee preferred an appeal being : C.A.No.38 of 2006 with the II Additional Sessions Judge, Puducherry. The learned II Additional Sessions Judge, vide judgement dated 20.11.2013 dismissed the said criminal appeal, against which, a revision petition was preferred, i.e., CrI.R.C.No.83 of 2014 to this Court.

2.2. This Court, while confirming the conviction, directed that the sentence could be modified to the extent of period undergone. The judgement of this Court, to which we have made a reference hereinabove is dated 13.10.2017.

3. The learned counsel for the petitioner says that despite the direction contained in the judgement of this Court dated 13.10.2017, passed in CrI.R.C.No.83 of 2014, the detainee/Mr.Seenu @ Seenuvasan has not been released by the respondents to date.

4. Mr.Baratha Chakravarthi, who appears for the respondents, says that this Court had only communicated the operative part of the judgement by way of an advance order, and it did not

indicate that the detainee had to be released forthwith, the fifth respondent had the matter placed before the Law Department. In sum, learned counsel says that the delay in releasing the detainee/Mr.Seenu @ Seenuvasan, is caused on this account.

4.1. Learned counsel, however, says that having regard to the facts and circumstances obtaining in the case, the detainee/Mr.Seenu @ Seenuvasan, will be released, if so directed by the Court.

5. We have called for the case bundle pertaining to CrI.R.C.No.83 of 2014. The case bundle contains the advance order dated 13.10.2017. The operative part of that order reads as follows :

"In the result, the Criminal revision is partly allowed and the conviction imposed by the Courts below on the petitioners/A1 to A3 for the offences under Sections 448 r/w 34, 323 r/w 34, 342 r/w 34, 366 r/w 34 and 376(2)(g) of IPC is confirmed and the sentences imposed on them by the Courts below are modified to that of the period already undergone by them."

5.1. In these circumstances, we are inclined to allow this petition.

6. Thus, for the foregoing reasons, we direct the release of the detainee/Mr.Seenu @ Seenuvasan, unless he is required to be kept in custody in another case. Given the urgency in the matter, this order will be communicated by the Registrar General of this Court to respondent No.5 via fax.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gg

To

1. The Chief Secretary to Government,
Union Territory of Puducherry,
Government of Puducherry,
Secretariat, Puducherry-605 001.

WEB COPY

2. The Secretary to Government (Home),
Government of Puducherry,
Secretariat, Puducherry-605 001.
3. The District Magistrate-cum-District Collector,
Office of the District Collector,
Government of Puducherry,
Puducherry.
4. The Director General of Police (DGP),
Office of the Director General of Police,
Puducherry Police Department,
Puducherry.
5. The Jail Superintendent of Police,
Central Prison, Kalapet, Puducherry.
6. The Additional Public Prosecutor
Puducherry.

H.C.P.No.2018 of 2017

ss (30/10/2017)



WEB COPY