

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2420 of 2017

G.Senguttuvan

... Petitioner

Vs.

1.The Inspector General of Police,
Trichy & District.

2.The Superintendent of Police,
Thiruvavarur & District.

3.The Inspector of Police,
Paravakottai Police Station,
Thiruvavarur District.

.... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to direct the respondents to produce the detenu namely poyyamozhi S/o.Palaiya aged about 53 years before this Court.

For Petitioner : Mr.P.Vijendran

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

O R D E R

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

1.This is a petition, whereby, a direction is sought qua, the respondents to secure the presence of the

detenu/Mr.Poyyamozhi.

2. The petitioner claims that he is a complainant in Crime No.204 of 2005 and also an eye witness to the death of his brother Tamilselvan.

2.1. It is further averred that the detenu i.e., the prime accused (A1) in Crime No.204 of 2005, has been absconding; a circumstance, which is leading to delay of trial in S.C.No.43 of 2014.

2.2. For this purpose, our attention has been drawn to the proceedings dated 02.12.2016, 04.01.2017 and 05.01.2017 in the aforementioned sessions case.

3. It is not disputed before us by the learned counsel for the petitioner that the petitioner has been issued a summon dated 18.01.2017, to depose before the concerned Court. Counsel for the petitioner, says that the summon dated 18.01.2017 has been assailed by the petitioner in this Court in CrI.O.P.No.1578 of 2017.

4. The grievance of the petitioner is that the State is not taking recourse to appropriate provisions of law to secure the presence of the detenu, i.e., the prime accused (A1).

5. To a query raised by the Bench as to why the petitioner, who is an eye witness in the aforementioned case, is not deposing and has, in fact, challenged the issuance of summons, we are told, is because of the reason that the detenu i.e, the prime accused (A1) is absconding. In the ordinary course, this response would have been in order. However, given the fact that the detenu, according to the petitioner, is deliberately, making himself scarce, in our view, recourse can be taken by the concerned Court to provisions of Sections 299 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") Besides this, the concerned Court can also take recourse to provisions of Section 82 of the Cr.P.C.

5.1. That being said, we are of the view that insofar as the present petition is concerned, the same would not lie for the relief sought for by the petitioner.

6. Thus, the petition is disposed of with the assurance by the learned Additional Public Prosecutor that the State will, inter alia, take recourse to the provisions of Section 82 of the Cr.P.C. to secure the presence of the

detenue. The trial Court should also consider, in our view, the possibility of splitting the case by bifurcating trial of those accused, who are, presently, available for examination, as against those who are absconding.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pam/vsm

To

- 1.The Inspector General of Police,
Trichy & District.
- 2.The Superintendent of Police,
Thiruvarur & District.
- 3.The Inspector of Police,
Paravakottai Police Station,
Thiruvarur District.
- 4.The Public Prosecutor,
Madras High Court,
Chennai.
- 5.The Principal District Judge,
Tiruvarur
- 6.The Joint Secretary to Government
Public (Law & Order),
Fort St. George, Chennai-9.

+1cc to Mr.P.Vijendran, Advocate, S.R.No.91681

H.C.P.No.2420 of 2017

RJ (CO)
abr (03/02/2018)