

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **07.09.2017**

CORAM:

**THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**

H.C.P.No.748 of 2017

T.D.Prabhavathi Petitioner

Vs.

State Rep. by
The Superintendent of Prison,
Central Prison-II,
Puzhal, Chennai.Respondent

Petition filed under Article 226 of the Constitution of India,
praying to issue a WRIT OF HABEAS CORPUS, directing the
respondents to release the petitioner's husband by name
Mr.T.D.Naidu, S/o. Mr.K.P.Naidu from the prison.

For Petitioner :Mr.A.V.Somasundaram

For Respondent :Mr.V.M.R.Rajentran
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.KALAIYARASAN, J)

This Habeas Corpus Petition has been filed under Article 226
of the Constitution of India seeking to release the petitioner's
husband by name Mr.T.D.Naidu, s/o. Mr.K.P.Naidu from the prison.

2. It is averred in the petition that the husband of the petitioner Mr.T.D.Naidu is languishing in Central Prison-II, Puzhal, Chennai in connection with case in ECIR.No.13/CEZO/2013 registered by the Deputy Director, Directorate of Enforcement, Chennai. Mr.T.D.Naidu was granted interim bail by this Court so as to pursue medical treatment by order, dated 27.04.2017 in CrI.O.P.No.6528 of 2017. The certified copy of the order reached the respondent by 5 pm on 28.04.2017, but the respondent has not released the petitioner's husband. Non-release of the petitioner's husband is nothing but violation of the order passed by this Court and his personal liberty as guaranteed under Article 21 of the Constitution has also been violated. It is not fair on the part of the respondent who insisted to comply the conditions imposed on T.D.Naidu by this Court. As per the order of this Court, the petitioner's husband has to comply with the conditions imposed by this Court only after release on bail. T.D.Naidu has been in illegal custody in Central Prison-II, Chennai from 28.04.2017 to till date due to the inaction on the part of the respondent. He is not able to pursue treatment for his illness. The respondent is responsible for the poor health condition of the petitioner's husband from 28.04.2017 onwards and he is liable to pay compensation. Therefore, the petitioner has come forward with this petition.

3. The respondent in his counter contends that this Court while granting interim bail to T.D.Naidu in its order, dated 27.04.2017 in CrI.O.P.No.6825 of 2017 had laid down certain conditions and those conditions have not been complied with by the petitioner's husband / remand prisoner No.86608, T.D.Naidu. Upon receipt of copy of interim bail order, the petitioner's husband was orally requested by the respondent to submit a written declaration regarding the conditions stipulated by this Court for release of petitioner on interim bail on 28.04.2017. A written communication dated 02.05.2017 was also sent. But the remand prisoner T.D.Naidu had not complied with the conditions and therefore, this petition is to be dismissed.

4. The main contention of the petitioner is that the conditions imposed by this Court while granting interim bail are to be complied with only after release of the remand prisoner on bail.

5. The learned single Judge of this Court granted interim bail to the remand prisoner T.D.Naidu by order, dated 27.04.2017 in CrI.O.P.No.6825 of 2017 with certain conditions in para 6 and the same reads thus :

"6...Accordingly the petitioner is ordered to be

released on interim bail till 09.06.2017, only for the purpose of taking treatment, subject to the following conditions :

- (i) the petitioner is directed to appear before the respondent / Directorate of Enforcement once in a week till 09.06.2017;
- (ii) the petitioner shall furnish his residential address, Identity proof, phone number, place of stay, etc., to the respondent.
- (iii) the petitioner shall not leave Tamil Nadu.
- (iv) the petitioner shall surrender his passport, if any, to the respondent;
- (v) the petitioner shall not tamper with the evidence or witness either during investigation or trial;
- (vi) the petitioner shall not abscond either during investigation or trial."

6. The respondent in the above CrI.O.P is the State represented by Deputy Director, Directorate of Enforcement, Government of India, Chennai. The remand prisoner filed Cont.P.No.917 of 2017 alleging that the respondent herein, namely the Superintendent of Prison, Central Prison-II, Puzhal, Chennai, disobeyed the order of the Court by not releasing him on production of the interim bail order. The learned Judge who granted interim bail while dismissing the contempt petition has held as follows :

"12. Taking note of the above submissions learned counsel for the parties, more particularly, the submission of the learned Public Prosecutor, it is seen that there is a specific direction by this Court for the accused to furnish the details as could be seen from paragraph 6(2) of the order, dated 27.04.2017 and the same has not been furnished by him. It is not the case of the accused that the details have been furnished and even thereafter, he has not been allowed to go on interim bail. The issue has also not been raised in the pleadings."

Thus it is clear that the accused has to furnish the details as per para 6(2) of the order, dated 27.04.2017 for his release. The above order has also not been challenged and becomes final.

7. As rightly pointed out by the learned single Judge, it is not the case of the petitioner that details have been furnished and even thereafter the petitioner's husband was not released. From the typed set, it has been brought to the notice of this Court a letter addressed to the Deputy Director, Directorate of Enforcement, Chennai, dated 02.05.2017 by the Advocates of the remand prisoner. Even in this letter it is stated that before releasing Mr.T.D.Naidu on interim bail, the prison authorities were instructing to give an

undertaking to the Directorate of Enforcement that he will strictly comply with the said conditions imposed on him and sent the details to the Deputy Director, Directorate of Enforcement. Furnishing the details to the Directorate of Enforcement has not even communicated to the Superintendent, Central Prison. The respondent in his counter has specifically stated that the remand prisoner has not complied with the oral request as well as the written communication of the Superintendent, Central Prison. As already pointed out it is also not the case of the petitioner that even after furnishing the details, the prisoner was not released on interim bail. Therefore, non-release of the prisoner pursuant to the interim bail order cannot be construed as illegal detention, particularly when there is no communication to the respondent herein either by the Directorate of Enforcement who is the respondent in the bail petition or on the side of the remand prisoner. Therefore, this petition is liable to be dismissed.

In fine, this Habeas Corpus Petition is dismissed.

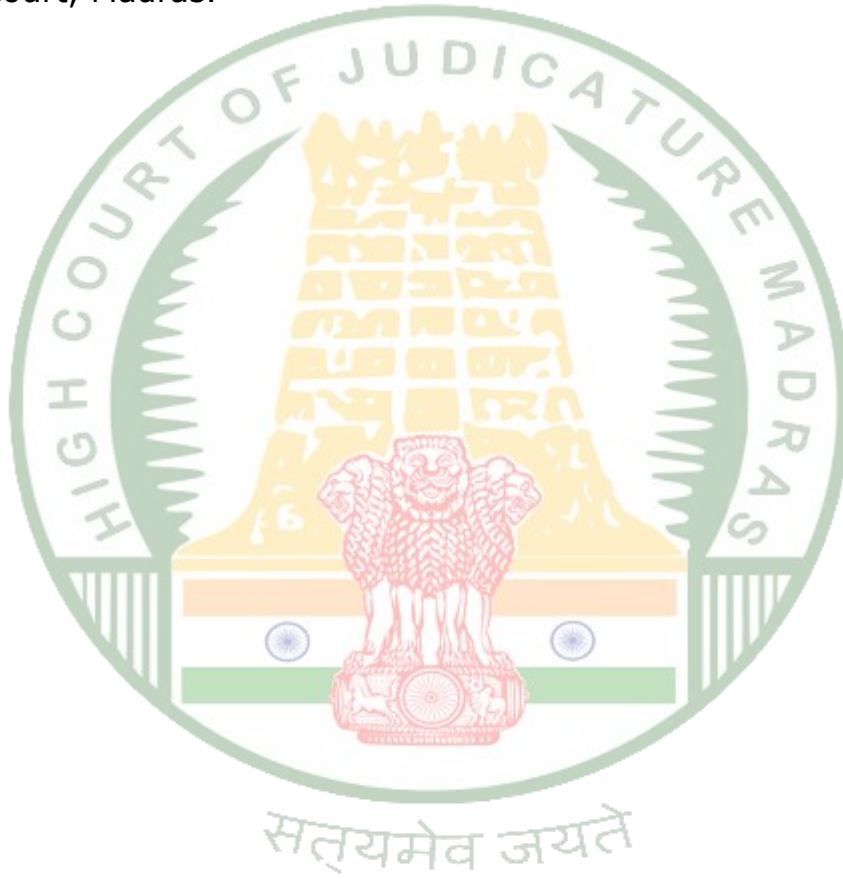
(A.S., J.) (P.K., J.)
07.09.2017

Index : Yes / No

tsvn

To

1. The Superintendent of Prison,
Central Prison-II,
Puzhal, Chennai.
2. The Public Prosecutor
High Court, Madras.



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**A.SELVAM, J.
AND
P.KALAIYARASAN, J.**

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**Pre-Delivery Order in
H.C.P.No.748 of 2017**

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