

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.03.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

H.C.P No.1044 of 2016

T. Mohan .. Petitioner

Vs

1. The State of Tamil Nadu,
rep by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009

2. The Superintendent of Prisons,
Central Prison, Trichy-20 .. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the respondents to calculate the period of remand undergone by the petitioner for the purpose of granting set-off to the petitioner namely T. Mohan, S/o Thangaraj, aged 56 years, Life Convict, now confined at Central Prison, Trichy-600 020

For Petitioner : Mr.P. Pugalenthir

For respondents: Mr.V.M.R. Rajendran
Addl. Public Prosecutor

ORDER

(Order of the Court was made by S. NAGAMUTHU,J.,)

The petitioner is the life convict. He has been convicted in S.C.No.232 of 1996 on the file of I Additional Sessions Judge, Chennai and he is confined at Central Prison, Tiruchirapalli. The grievance of the petitioner is that the period of detention, undergone by the detainee, as under trial prisoner, has not been given set off, as required under Sec.428 Cr.P.C.

2. In the counter, filed by the respondents, it is stated that the learned Sessions Judge, in the Warrant itself, has stated that the accused will not be entitled for set off and therefore, no set off has been given.

3. Mr.P. Pugalenth, learned counsel for the petitioner produced the Order passed by the Division bench of this Court in HCP No.708 of 2007 dated 14.06.2007, wherein, in respect of co-accused, in similar case, the Division Bench had set aside the said part of the trial court, wherein, the trial Court had stated that the detenu would not be entitled for set off.

4. The Division Bench held that Set off under Sec.428 of Code of Criminal Procedure is the statutory and mandatory. We are in full agreement with the Division Bench. In the instant case also, the petitioner is entitled for set off as required under Sec.428 of Criminal Procedure. At the same time, it is not our view that the petitioner is entitled for any remission. In our considered view, it is fully within the purview of the authorities concerned to decide as to whether remission can be given to the petitioner. Under Sec.433-A (Restriction on Powers of remission or commutation in certain cases) of the Code of Criminal Procedure, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishment provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

5. In such view of the matter, we direct the respondents to give set off the period of detention, already undergone by the petitioner/accused and to proceed further in accordance with law.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sr/jer

To

1. The Secretary to Government,
Home, State of Tamil Nadu,
Prohibition and Excise Department,
Secretariat, Chennai-600 009
 2. The Superintendent of Prisons,
Central Prison, Trichy-20
 3. The 1st Additional Sessions Judge, Chennai.
 4. -do- Thro' the Principal Sessions, Judge, Chennai.
 5. The Public Prosecutor, High Court, Chennai.
- + 1 cc to Mr.P. Pugalenth, Advocate Sr.18614

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BR(CO)

Eu 17.4.17

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