

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2018

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

H.C.P.No.255 of 2018

Papanasam

.. Petitioner

Versus

- 1.The State Represented by
The Secretary to Govt.
Department of Home (Prison)
Fort, St.George,
Chennai - 600 009.
- 2.The Director General of Prison,
Department of Prison,
Thalamuthu Building,
Egmore, Chennai - 600 008.
- 3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai-66.
- 4.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

.. Respondents

Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Habeas Corpus, to call for the records made in No.1043/R11/2016 dated 18.05.2016 on the file of the Superintendent of Prison, Puzhal, Chennai-66 and quash the same as illegal and direct the respondents to produce the detenu Papanasam, son of Piramanayagam Pillai, aged about 43 years, convict No.1043 now confined at Central Prison, Palayamkottai, Tirunelveli District and set him at liberty on premature release.

For Petitioner : Mr.R.Sankara Subbu
for Ilayaraja Kandasamy.
For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

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

This Writ of Habeas Corpus Petition has been filed seeking direction to the respondents to produce the detenu Papanasam, son of Piramanayagam Pillai, aged about 43 years, convict No.1043, now confined at Central Prison, Palayamkottai, Tirunelveli District and set him at liberty on premature release.

2.In the supporting affidavit, it is stated that the detenu has been arrested by the Cheranmahadevi Police in Crime No.202 of 1995 and after trial has been convicted for the offences under Sections 341, 302, 307, 452, 34 r/w 109 I.P.C., for the occurrence, which is said to have taken place on 13.11.1995. Though, death sentence was originally ordered, later on, it was modified as life imprisonment. When the death sentence given in S.C.No.125/1997 was under examination before this Court, for the second time, which under incarceration he had involved in offences, under Sections 120(B), 130, 182, 186, 466, 477, 420 r/w 109 I.P.C., in Crime Nos.48, 49, 51 and 52 of 2005, on the file of CBCID. In that case, he turned as approver and judgment was passed on 08.11.2011. In the said case, the first accused Rajan @ Maran @ Udayakumar is still absconding. Therefore, the custody of the detenu in P.R.C.No.25 of 2009 was continued, while pronouncing the judgment.

3. In paragraph 44 of the judgment dated 08.11.2001 in the above case i.e., S.C.No.104 of 2010, the I Additional Sessions Judge, Cuddalore has passed an order holding that since the case of the absconding accused namely Rajan @ Maran @ Udayakumar is pending, there is no possibility of releasing the detenu on bail. The relevant observation reads as under:

"As regards the contention that the trial was vitiated by reason of the approver Ram Sagar being released on bail contrary to the provisions contained in clause (b) of sub-section (4) of Section 306 of the code. It may be pointed out that Ram Sagar after he was granted pardon by the learned Magistrate by his order dated 09.01.1985 was not granted bail either the committing Magistrate or by the learned Additional Judicial Commissioner to whose court the case was committed for trial. The approver Ram Sagar was however granted bail by an order passed by the High Court of Patna, Ranchi Bench in Criminal Miscellaneous case No.4735 of 1986 in pursuance of which he was released on bail on 21.01.1987 while he was already examined as a witness by the committing Magistrate on 30.01.1986 and 31.01.1986 and his statement in

sessions trial was also recorded from 06.09.1986 to 19.11.1986. It is no doubt true that clause (b) of Section 360(4) directs that the approver shall not be set at liberty till the termination of the trial against the accused person and the detention of the approver in custody must end with the trial. The dominant object of requiring an approver to be detained in custody until the termination of the trial is not intended to punish the approver for having come forward to give evidence in support of the prosecution but to protect him from the possible indignation, rage and resentment of his associations in a crime whom he has chosen to expose as well as with a view to prevent him from the temptation or saving his one time friends and companies after he is granted pardon and released from custody. It is for these reasons that clause (b) of Section 360(4) casts a duty on the court to keep the approver under detention till the termination of the trial.

vdnt ,e;j epiyapy; mg;Uth; ghgrhej;ij ePjp;j Jiw
eLth; vz;.2 ePjpkd;w;j;jp;y; njitg;gLk; nghJ
MIh;gLj;jg; gl ntz;Lbkd;W cj;jutplg;gLfpwJ.

The learned Sessions Judge, while passing the order has also relied upon the judgment in AIR 1994 SC 2420, in which, the object of keeping the approver in custody has been explained in which it has been clearly stated that the reason is to protect his interest and not to punish him.

4. In compliance of the above order, the Jail Authorities have passed the impugned order stating that the case in Crime Nos.48, 49, 51 and 52 of 2005 is pending and therefore, the detenu is not entitled to the benefit of G.O.Ms.1155 Home (Pri.IV) Department dated 11.09.2008. In the impugned order, the Jail Authorities have come to a conclusion that the detenu is not entitled to be considered for premature release on the ground that he is not eligible on account of the pending cases.

5. It is submitted by the learned counsel that the detenu is no more an accused and his conduct has been taken note by the trial Court while passing the order. However, only for the purpose of safety and security of the detenu, he has been ordered to be in custody for the purpose of facilitating trial as against the absconding accused. It is therefore the submission of the learned counsel for the detenu that the impugned order dated 18.05.2016, passed by the third respondent/Jail Authorities clearly shows non-application of mind, as the detenu cannot be made to be in confinement for the inability of the police to trace the absconding accused and make him face the trial. Therefore, the impugned order is liable to

be set aside and direction issued to the respondents to consider the case of the detenu in terms with G.O.Ms.1155 Home (Pri.IV) Department, dated 11.09.2008 and give the benefit of the above G.O and release the detenu.

6.Heard the learned Additional Public Prosecutor on the above contentions.

7. A careful perusal of the materials available on record reveals that the detenu is entitled for the benefit under the above G.O., but, for his detention in the case in which he turned approver. However, the detenu being an approver and the inability of the police to trace the absconding accused cannot be put against him to deny the benefit of G.O.Ms.No.64, Home (Prison-IV) Department, dated 01.02.2108. This Court is of the considered view that a direction can be issued to the respondents to consider the representation of the detenu for availing the benefit of G.O.Ms.No.64.

7.In such view of the matter, this Habeas Corpus Petition is allowed, directing the detenu to submit a fresh representation to the Jail Authorities along with the copy of this order and the Jail Authorities, on receipt of such representation, shall consider the same in accordance with law and pass orders on the said representation within a period of four weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

1.The Secretary to Govt.
Department of Home (Prison)
Fort, St.George,
Chennai - 600 009.

2.The Director General of Prison,
Department of Prison,
Thalamuthu Building,
Egmore, Chennai - 600 008.

3.The Superintendent of Prison,
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4.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

5.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.Ilayaraja Kandasamy, Advocate, S.R.No.44462

H.C.P.No.255 of 2018

KGK(CO)
GSP(05/10/2018)



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