

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

AND

THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P.No.387 of 2018

Kanniyammal

... Petitioner

versus

1. The Additional Director General
of Prison,
C.M.D.A.Towers,
Egmore, Chennai - 600 008.

2. The Superintendent,
Central Prison,
Vellore.

3. Inspector of Police,
Ennore Police Station,
Chennai.

... Respondents

Habeas Corpus Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Habeas Corpus, to direct the respondents to set off the pre-trial period of the imprisonment under Section 428 of Cr.P.C. From 24.02.2002 to 04.03.2004 already undergone by the detenu, M.Karmegam, convict no.1862, confined at Central Prison, Vellore, in SC No.102/2006 on the file of the learned Principal District and Sessions Judge, Fast Track Court No.IV, Poonamallee.

For Petitioner : Dr.S.Manoharan

For Respondents: Mr.R.Prathap Kumar

Additional Public Prosecutor

ORDER
(DELIVERED BY DR. S.VIMALA, J.)

This Habeas Corpus Petition has been filed by the mother, seeking a direction to the jail authorities to include the pre-trial period of imprisonment from 24.02.2002 to 04.03.2004, which is already undergone by the detenu M.Karmegam, convict no.1862, confined at Central Prison, Vellore, along with the period of imprisonment after trial for the purpose of calculating the eligibility period for pre-mature release.

2. It is stated that the pre-trial period starting from 24.02.2002 to 04.03.2004 ought to have been included as it is mandatory as per the provisions of Section 428 Cr.P.C.

3. A perusal of the Judgment would go to show that the detenu has been arrested on 24.02.2002. In para 6 of the Judgment, it is stated that on 24.02.2002, i.e. three days after the occurrence, A1 and A2 were arrested at Thiruvallur Bus Stand and the date of complaint being 21.02.2002.

4. It is needless to point out that there are only two accused in the case, namely, Annamalai and Karmegam. The date of complaint is 21.02.2002. To substantiate that they have been arrested on 24.02.2002, the confession statement recorded from both the accused on 24.02.2002 is relied upon. Therefore, the contention that the accused was in custody from 24.02.2002 must be true and correct.

5. In respect of co-accused, already, this Court, by order dated 25.01.2018 in H.C.P.(MD) No.103 of 2018, has considered the same request and therefore, there is no impediment to consider the request of this petitioner also. Under such circumstances, this petition has to be ordered.

6. In the counter filed by the Superintendent of Police, Central Prison, Vellore, it is stated that in the warrant, the trial Court has mentioned that the prisoner is not eligible for set off and therefore, the Jail authority did not calculate the period of incarceration during trial and pre-trial. This contention cannot be accepted, as the consideration of pre-trial detention is mandatory as contemplated under Section 428 Cr.P.C. What is mentioned in the warrant of arrest is the information that the period of set off has not been noted in the warrant. It does not mean that the jail authorities should not consider the pre-trial period of detention.

7. It is relevant to extract the provision of Section 428 Cr.P.C. and the same is extracted hereunder:

"428. Period of detention undergone by the accused to be set off against the sentence of imprisonment:

Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

Provided that in cases referred to in section 433A, such period of detention shall be set off against the period of fourteen years referred to in that section."

From the reading of the provisions of Section 428 Cr.P.C., it is evident that the period of incarceration undergone by the accused during investigation, enquiry or trial has to be included and it shall not be omitted. Therefore, the claim of the petitioner is justified.

8. Hence, the authorities concerned are directed to calculate the period of incarceration, by taking into account the period of incarceration during the trial and pre-trial, i.e. 24.02.2002 to 04.03.2004, for calculation of period of imprisonment undergone in order to decide the eligibility period for pre-mature release.

9. Accordingly, the Habeas Corpus Petition is ordered.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

ogy

To

1. The Additional Director General
of Prison,
C.M.D.A.Towers,
Egmore, Chennai - 600 008.

2. The Superintendent,
Central Prison,
Vellore.

3. Inspector of Police,
Ennore Police Station,
Chennai.

4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Manoharan, Advocate SR.No.39048

H.C.P.No.387 of 2018

GP(CO)
GN(11/07/2018)