

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2018

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THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2023 of 2018

David Arokiaraj @ Dass,
S/o.Sakkariyan. Petitioner

-vs-

The State represented by,
The Inspector of Police,
Madhavaram Milk Colony,
Police Station,
Madhavaram, Chennai-600 051.
(Crime No.337 of 2006) Respondent

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Habeas Corpus,
to direct the learned Additional District and Sessions Judge, to
conduct the retrial in S.C.No.161 of 2007 in accordance with the
judgment given by this Hon'ble Court in C.A.No.664 of 2008 dated
24.10.2009 as early as possible.

For Petitioner :: Mr.M.G.Udhayashankar

For Respondents:: Mr.M.Mohammed Riyaz
Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.NIRMAL KUMAR, J.]

The petitioner has filed the Crl.O.P.No.531 of 2016 to
direct the Principal District and Sessions Judge to conduct the
retrial in S.C.No.161 of 2007 in accordance with the Judgment
given by this Court in C.A.No.664 of 2008 dated 24.10.2009.

2.The learned counsel for the petitioner and Co-accused
namely Marry Xavier were convicted by Judgment dated 14.07.2007
made in S.C.No.161 of 2007 in Cr.No.337 of 2006 passed by the

learned Additional District and Sessions Judge, Fast Court No.III, Thiruvallur District based on the charge sheet filed by the respondent/police herein.

3.He further submits that the petitioner in another case along with Co-accused namely Mary Xavier were convicted by Judgment dated 14.07.2007 made in S.C.No.160 of 2007 in Cr.No.335 of 2006 passed by the learned Additional District and Sessions Judge, Fast Court No.III, Thiruvallur District based on the charge sheet filed by the respondent/police herein.

4.As against the conviction in S.C.No.161 of 2007, the Co-accused Mary Xavier preferred an appeal in CrI.A.No.664 of 2008 before this Court, and this Court by Judgment dated 24.10.2009 set aside the conviction and sentence imposed on the Co-accused Mary Xavier. The petitioner herein had preferred appeal in CrI.A.No.749 of 2011 before this Court for his conviction dated 14.07.2007 in S.C.No.160 of 2007 and the same was allowed by this Court on 09.03.2016. These are the two cases, the petitioner was involved, despite the petitioner being acquitted in both the cases, he was not released from the prison.

5.Since, the petitioner was not released from the prison, he had filed a petition under Section 439 of the Code of Criminal Procedure for enlarging him on bail pending trial in S.C.No.161 of 2007 before the Additional District and Sessions Judge, Fast Track Court No.III, Thiruvallur. The Additional District and Session Judge, Fast Track Court No.III, Thiruvallur could not number the bail petition for the reason records in S.C.No.161 of 2007 is yet to be received.

6.The learned counsel for the petitioner submits that, though, the conviction in S.C.No.161 of 2007 dated 14.07.2007 was set aside and retrial was ordered by this Court and the trial is yet to commence. The petitioner had sought direction of this Court to expedite and conduct the retrial in S.C.No.161 of 2007. During the pendency of the trial, the petitioner has filed the above petition under Section 439 of the Code of Criminal Procedure to release him from prison, since as on date, the petitioner was not facing any conviction.

7.The learned Single Judge of this Court referred this matter to the Division Bench of Habeas Corpus Petition Jurisdiction, since the question of detention of the petitioner seems to be without sanction of law. This Court has ordered notice to the respondent and when the case was taken up for hearing today i.e. on 27.09.2018, the learned counsel for the petitioner has submitted that the petitioner had been released from the prison on 21.09.2018.

8.The learned Additional Public Prosecutor submits that as per the directions of this Court in CrI.A.No.664 of 2008 to restore S.C.No.161 of 2007 to the file of the Additional District Sessions Judge, Fast Track Court No.III, Thiruvallur and to conduct retrial, summons have been issued to LW3, LW4, LW6, LW8, LW10 for their evidence on 03.10.2018.

9.In view of the above nothing survives in this Petition and hence, this Habeas Corpus Petition is closed and this Court directed the trial Court to dispose of the case as expeditiously as possible. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional District and Sessions Judge,
Fast Track Court No.III,
Thiruvallur.
- 2.The Inspector of Police,
Madhavaram Milk Colony,
Police Station,
Madhavaram, Chennai-600 051.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Shanthakumari, Advocate Sr.67344

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