

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.07.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

H.C.P. NO. 750 of 2018

Prabhakaran

.. Petitioner

- Vs -

1. State Rep. by
The Superintendent of Police,
Central Prison,
Cuddalore.

2. The Inspector of Police,
Thiruvarur Town Police Station,
Thiruvarur.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of habeas corpus, to direct the respondents to produce the detenu Ravi @ Mattu Ravi, S/o.Pethaperumal, aged 55 years, now confined at Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr. R.Prathap Kumar,
Additional Public Prosecutor

ORDER

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

Pre-trial detention for a considerable period would amount to illegal detention and as this kind of detention is against the spirit of the Constitution and especially, against Article 21 of Constitution of India, the detenu is entitled to be released, is the contention raised by the son of the detenu while seeking a direction to the respondent to produce his father Ravi @ Mattur Ravi, aged about 55 years, confined at Central Prison, Cuddalore and to set him at liberty.

2. The learned counsel appearing for the petitioner, relying upon series of decisions, contended that when affected parties are allowed to languish in jail without expeditious

trial, the criminal justice would break down and therefore, the detenu must be ordered to be released on bail, so as to enable him to prepare for his defence. Pointing out that the charge sheet has already been laid and it is time for the detenu to prepare for his defence, the learned counsel sought for directions for the release of the detenu.

2.1. The following are the decisions relied upon:

(i) AIR 1979 SC 1360 (Hussainara Khatoon and others vs. Home Secretary, State of Bihar, Patna)

(ii) AIR 1981 SC 939 (Kadra Pehadiya and others vs. State of Bihar)

(iii) 1986 SCC (Cri) 511 (Raghubir Singh and others vs. State of Bihar)

(iv) AIR 1987 SC 1333 (Ram Dass Ram vs. State of Bihar)

(v) AIR 1992 SC 1701 (Abdul Rehman Antulay, etc. vs. R.S.Nayak and another)

(vi) 2012 (1) SCC 40 (Sanjay Chandra vs. Central Bureau of Investigation).

3. The learned Additional Public Prosecutor has filed a detailed counter, in which, essential factors have been brought to the knowledge of this Court. The petitioner's father has been originally arrested on 23.12.2011, in respect of the offence under Sections 147, 148, 341, 326, 307 read with 3(a), 4 (a)(i) of the Explosive of Substances Act; statutory bail has been granted to the petitioner's father and he was released on bail on 26.06.2012. Further, two bail petitions have been filed before the High Court at pre-trial stage in O.P.No.12563 of 2017 that has been dismissed on 02.08.2017 and O.P.No.23779 of 2017 that has been dismissed on 18.12.2017.

3.1. The learned Additional Public prosecutor submits that non-bailable warrant has been executed against the petitioner's father and therefore, the custody of the petitioner's father cannot be said to be an illegal custody. Therefore, the Habeas Corpus Petition should be dismissed as not maintainable.

3.2. This Court expressed the view that the detention of the petitioner's father cannot be said to be illegal and therefore, the remedy open to the petitioner's father is to move the Trial Court.

4. The learned counsel appearing for the petitioner points out the decision reported in 2018 2 MLJ CrL 201 (SC) (Dataram singh vs. State of Uttar Pradesh and Another), where under, the Hon'ble Supreme Court has held that it is an important to ascertain, whether the accused was hiding from the Investigating Officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a Judge would need to consider in an appropriate case, and that this approach has not been followed by the trial Court and therefore, options/liberty must be given to the accused to move the Trial Court.

5. We have expressed our view that this Habeas Corpus Petition may not be maintainable in view of the fact that the petitioner's father is in custody in execution of the Non-bailable warrant issued and therefore, no further direction would be necessary. However, apprehension is expressed that, as already two bail applications have already been dismissed by the High Court, the Trial Court may have some hesitation to grant bail.

6. The learned counsel for the petitioner also points out that the charge sheet has been filed in this case and the case is ripe for trial and the petitioner has to come out on bail for preparation of defence.

7. We are not inclined to go into the merits of the matter, except pointing out that, whenever proper application is moved before the Trial Court, the Trial Court may consider the claim of the detenu, in the light of the recent Judgment of the Supreme Court reported in 2018 2 MLJ CrL. 201 (cited supra) and to pass orders on merits and in accordance with law.

8. With the above observation, the Habeas Corpus Petition is disposed of.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Superintendent of Police,
Central Prison,
Cuddalore.

2. The Inspector of Police,
Thiruvarur Town Police Station,
Thiruvarur.

3. The Superintendent of Prisons,
Central Prison, Cuddalore.

4. The Public Prosecutor,
High Court Madras.

+lcc to Mr.R.Sankarasubbu, Advocate, S.R.No.47492

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GSP(18/07/2018)