

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on

Orders Pronounced on

10.07.2018

05.10.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

AND

THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Habeas Corpus Petition No.2449 of 2017

& Crl.M.P.No.1894 of 2018

Tmt. Naziakhanum ... Petitioner

versus

1. The State of Tamil Nadu, Represented by its Secretary,

Department of Home, Fort St. George,

Chennai 600 009

2. The Assistant Commissioner of Police,

Ambattur Range, Ambattur,

Chennai 600 053 ... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a direction to direct the respondents to produce the detenu, Mohamed Musthagir, Son of Mohamed Yusuf, now confined at Special Jail, Poonamallee, Chennai, before this Court.

For Petitioner : Mr. R.Sankrasubbu

For Respondents : Mr. R.Prathap Kumar, APP.,

O R D E R

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

The wife has filed this Habeas Corpus Petition stating that her husband, Mohamed Musthagir, is in illegal detention and therefore, the respondents must be directed to release her husband from the Special Jail, Poonamallee, Chennai.

2. The main contention raised by the petitioner is that the implication of her husband for the offence under Sections 341, 307, 302 read with Section 153A and 120B IPC and under Section 16 (1) (a), 17, 18 and 20 of the Unlawful Activities Prevention Act, 1967 (hereinafter referred to as "the Act") is unwarranted and the prolonged detention of the accused from 07.08.2014, without any valid order of remand, is illegal and it is violative of Article 21 of the Constitution of India.

2.1. In order to support the contention that the continued detention is illegal, the following decisions are relied upon:-

(i) Crl.R.C.Nos.1222 of 2015, 19 of 2016 and 1222 of 2015 (Ganapathi v. DSP, Valparai, Coimbatore District).

(ii) 1996 SCC (Cri) 366 (Shaheen Welfare Association v. Union of India and others).

(iii) 2001 MWN (Criminal) 1 (Paramasiva Pandian v. State, Rep. by the Inspector of Police, Civil Supplies (CID) Tirunelveli Unit, Tirunelveli).

(iv) AIR 1979 Supreme Court 1360 (Hussainara Khatoon and others v. Home Secretary, State of Bihar, Patna).

(v) 1980 (1) SCC 81 (Hussainara Khatoon v. Home Secretary).

- (vi) (1980) 4 SCC 531 (Icchu Devi Choraria v. Union of India).
(vii) (1993) SCC (Cri) 1126 (Navalshankar Ishwarlal Dave and another v. State of Gujarat and others).
(viii) 1975 SCC (Cri) 484 (Matabar Parida and three others v. State of Orissa).

3. Per contra, the learned Additional Public prosecutor submitted that, this writ petition is not maintainable and the remedy open to the petitioner is to file an appeal under the Act. It is pointed out that, already the bail application filed by this accused (as Petitioner No.12) before the Special Court, Poonammallee, has been dismissed by the order dated 20.04.2017, and the legal remedy open to the accused is to file an Appeal under Section 43 of the Act and not the Habeas Corpus Petition.

3.1. This contention is partly justified and there is a remedy of appeal under the Act. However, it is contended by the learned counsel appearing for the appellant / accused that the order of remand is without application of mind and without notice to accused and therefore, it can also be challenged as totally illegal and in the event of complete illegality, the Habeas Corpus Petition is maintainable.

4. The learned Additional Public Prosecutor has filed a petition before the learned Principal District and Sessions Judge, Tiruvellore, in CrI.M.P.No.3994 of 2014 stating that investigation could not be completed within a period of 90 days, therefore, the remand should be extended from 90 days to 180 days.

4.1. Accepting the said petition, the remand has been extended for a further period of three months by the learned Special Judge.

4.2. A petition under Section 167 (2) of the Cr.P.C., has been filed by the accused persons seeking to release them on bail on the ground that the prosecution failed to file the charge sheet within the prescribed time limit. This application has been dismissed on the ground that already permission for extension of remand has been allowed by the Court.

5. The learned Additional Public Prosecutor appearing for the respondent relied upon the judgment of this Court reported in CDJ 2018 MHC 747 (Muhammed Sahibullah @ Muhammed Samiyallah and another v. State, Rep. by ACP, Chennai), where-under it has been held that once the extension of remand is rejected, the accused would be entitled to statutory bail under Section 167 (2) Cr.P.C., In other words, it is contended that since, in this case, extension of remand has already ordered, there is no question of releasing the accused on bail.

6. Relying upon the decision reported in the case of R.Thiruselvam and others v. DSP, NIA, Hyderabad and Others, in H.C.P.No.1642 and 2058 to 2062 of 2015, it is contended by the learned Additional Public Prosecutor that though the initial order of remand was invalid, the subsequent orders of remand are valid and therefore, the detention was not illegal and therefore, the accused cannot be set at liberty.

7. Remand cannot be extended, without notice to accused is the main contention of the learned counsel for the accused.

Considering the facts and circumstances of the case in the light of the contentions raised on both sides, this Court is of the view that the extension of remand passed by the trial court is not legally correct and the order of remand should have been passed after hearing the accused also.

7.1. The order passed in CrI.M.P.No.3994 of 2014 dated 16.10.2014, based on which Bail Application was dismissed, did not reflect that the notice was given to the accused or that the accused was heard before extension of remand. The order only reads that considering the gravity of offence, period of investigation is extended for the period of 90 days.

7.2. While rejecting the Bail Application, the learned Judge has stated that the time for investigation has been extended for a further period of three months and therefore, the Bail Application is rejected.

8. Under the stated circumstances, the order, rejecting the Bail Application and the order extending further investigation are hereby set-aside. The matter is remitted back to the trial court with a direction to the trial court to consider the Application filed by the learned Special Public Prosecutor after giving notice to the accused and to decide the same in accordance with law. If the accused moves the bail application, it shall be considered in accordance with law.

9. With the above directions, this Habeas Corpus Petition is disposed of. No costs. Consequently, the connected Crl.M.P is closed.

(S.V.J.,) & (S.R.T.J.,)

05.10.2018

Index : yes / no

Web : yes / no

speaking order / non-speaking order

srk

To

1. The Secretary, State of Tamil Nadu,
Department of Home, Fort St. George, Chennai 600 009
2. The Assistant Commissioner of Police,
Ambattur Range, Ambattur, Chennai 600 053
3. The Superintendent of Prisons, Special Jail,
Poonamallee, Chennai
4. The Public Prosecutor, High Court, Madras.

S.VIMALA, J.,

AND

S.RAMATHILAGAM, J.,

srk

H.C.P.No.2449 of 2017

& Crl.M.P.No.1894 of 2018

05.10.2018

Justice S.Vimala
Judge
High Court, Madras

22.09.2018

For consideration

Pre-Delivery Order in

Habeas Corpus Petition No.2449 of 2017
& Crl.M.P.No.1894 of 2018

Justice S.Vimala

To

The Hon'ble Mrs. Justice S.Ramathilagam,
Judge, High Court, Madras.

Pre-Delivery Order in
H.C.P.No.2449 of 2017
& Crl.M.P.No.1894 of 2018

To

The Hon'ble Dr. Justice S.Vimala
and
The Hon'ble Mrs. Justice S.Ramathilagam

Most Respectfully submitted:

S.Ramkumar

Pvt. Secy., to the Hon'ble Judges.