



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2018

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

HCP [MD].No.103 of 2018

Annamalai

: Petitioner

-vs-

1.The State of Tamil Nadu, Rep. by
The Principal Secretary to Government,
Home (Prison) Department,
State of Tamil Nadu,
Secretariat, St.George Fort,
Chennai-9.

2.The Additional Director General of Police /
Inspector General of Prisons,
C.M.D.A. Towers II,
No.1, Gandhi Irvin Road,
Elumbur, Chennai-8.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

4.The Inspector of Police,
Ennore Police Station,
Chennai.

: Respondents

PRAYER: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus, call for the entire records, directing the respondents to produce the body or person of petitioner by name Annamalai, Son of Ammavasai, aged about 38 years now lodged and confined at Central Prison, Madurai before the Court for set off the remand period of detention during pre trial from 18.04.2005 to 29.02.2008 in S.C.No.102 of 2006 on the file of the Additional District and Sessions Court (Fast track IV) Poonamallee, Chennai and consequently direct the respondent nos.1, 2 and 3 to calculate and include those days with conviction sentence period under Section 428 of Criminal Procedure Code for consider the petitioner for premature release.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.C.Ramesh

Addl. Public Prosecutor



O R D E R

[Order of the Court was made by
S.VIMALA, J.,]

The petitioner herein is the accused in S.C.No.102 of 2006 on the file of the Additional District and Sessions Court (Fast track IV), Poonamallee, Chennai. By the Judgment, dated 29.02.2008, the accused herein was found guilty under Section 302 IPC and he was convicted and sentenced as follows:-

Convicted under Sections	Sentence imposed
302 IPC	To undergo imprisonment for life.

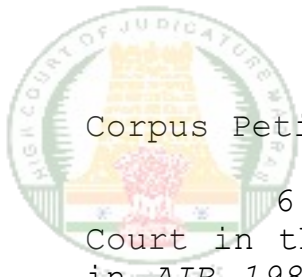
2. The petitioner is in custody as a convict prisoner on and from 29.02.2008. It is the case of the petitioner that even prior to that i.e. From 18.04.2005 to 28.02.2008 that is for a period of 2 years 10 months 12 days, he was in custody and this period of 2 years 10 months and 12 days incarceration has not been mentioned in the Judgment of the learned Sessions Judge. The petitioner claims that for this period, he is entitled for consideration, as contemplated under Section 428 of Criminal Procedure Code.

3. The learned counsel for the accused would submit that the period of incarceration during the time of investigation is also to be taken into consideration as per the decision in *ALKOO SADA v. STATE OF BIHAR*, reported in 1998 Cr1.L.J. 4345 (Pat), wherein it has been held as under:

"Computation of period - Reckoning of - The period which have already undergone in prison during trial must be set off against the sentence period awarded to accused."

4. The principle of set off, as explained in the decision of the Hon'ble Supreme Court in the case of *State of Maharashtra and another vs. Najakat alia Mubarak Ali*, reported in 2001 (6) SCC 311, is also relied upon by the learned counsel for the accused, whereby it was held that the period of imprisonment undergone by an accused as an undertrial during investigation, inquiry or trial of a particular case, irrespective of whether it was in connection with that very case or any other case can be set off against the sentence of imprisonment imposed on conviction in that particular case. The decision of this Court dated 21.09.2017 is also relied on, whereunder in H.C.P.(MD)No.1394 of 2017, this Court has ordered that the period of incarceration during the time of investigation should be counted while calculating the period of incarceration after conviction.

5. The Additional Public Prosecutor would submit that when the accused is in custody by virtue of a legal Judgment, the Habeas



Corpus Petition will not lie and it is not maintainable.

6. It is pertinent to mention here that the Hon'ble Supreme Court in the case of *Sunil Batra vs. Delhi Administration*, reported in AIR 1980 SC 1579 has expanded the jurisdiction for entertaining the habeas corpus petition, holding that technicalities and legal niceties are no impediment to the Court entertaining even an informal communication as a proceeding for habeas corpus, if the basic facts are found.

7. Under such circumstances, we are of the view that the writ of Habeas Corpus Petition is maintainable. Accordingly, the authorities concerned are directed to calculate the period of incarceration for pre-mature relief, by taking into account the period of 2 years 10 months 12 days, during which, the accused was in custody during investigation period, for calculation to find out the eligible period for consideration for pre-mature release.

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

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To:

1. The Principal Secretary to Government,
Home (Prison) Department,
State of Tamil Nadu, Secretariat,
St. George Fort, Chennai-9.
 2. The Additional Director General of Police /
Inspector General of Prisons,
C.M.D.A. Towers II,
No.1, Gandhi Irvin Road, Elumbur, Chennai-8.
 3. The Superintendent of Prison,
Madurai Central Prison, Madurai District.
(In duplicate for Communication to the detainee)
 4. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St. George, Chennai.
 5. The Inspector of Police,
Ennore Police Station, Chennai.
 6. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.
- Copy to: The Additional District and Sessions Judge,
Poonamallee, Chennai.
- +1cc to Mr. R. ALAGUMANI, Advocate, SR.44224

HCP [MD].No.103 of 2018
25.01.2018

RMI/RR

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KK/SV MMS/SAR 27/09.02.2018/ 3P- 10C/