



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2018

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

HCP [MD].No.1802 of 2017

Subbiah

... Petitioner

-vs-

1.The Secretary to Government
Home Department,
Fort St. George,
Chennai.

2.The Superintendent of Prison
Palayamkottai Central Prison,
Tirunelveli District

: Respondents

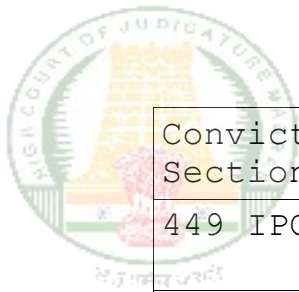
PRAYER: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to direct the respondents to produce the body or person of the petitioner Subbiah, son of Ramasamy Konar, aged about 62 years, now lodged and confined in Central Prison, Palayamkottai before this Court for set off the remand period of petitioner since 21.08.1995 to 13.10.1995 under Section 428 of the Code of Criminal Procedure and set the detenu at liberty.

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 2nd accused in S.C.No.114 of 1996 on the file of the III Additional District and Sessions Court, Tirunelveli. By the Judgment, dated 11.01.1999, the accused herein along with two others by name Lakshmanan and Venkatachalam, were found guilty under Sections 449, 506(ii) and 302 IPC r/w Section 34 of IPC and they were convicted and sentenced as



Convicted under Sections	Sentence imposed
449 IPC	To undergo rigorous imprisonment for seven years
506(ii) IPC	To undergo simple imprisonment for two years.
302 IPC	To undergo life imprisonment.

The sentences were ordered to run concurrently.

2. The petitioner is in custody as a convict prisoner on and from 11.01.1999. It is the case of the petitioner that even prior to that i.e. from 21.08.1995 to 13.10.1995 that is for a period of 53 days, he was in custody and this period of 53 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 CrL.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, where-under in H.C.P.(MD)No.1394 of 2017, this Court has ordered that the period of incarceration during the time 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 notices 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 53 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-II)

/True Copy/

Sub Assistant Registrar

To:

1. THE SECRETARY TO GOVERNMENT, HOME DEPARTMENT, FORT. ST. GEORGE, CHENNAI-600 009.
2. THE SUPERINTENDENT OF PRISON
PALAYAMKOTTAI CENTRAL PRISON, TIRUNELVELI DISTRICT.
(IN DUPLICATE COMMUNICATE TO DETENU)
3. THE DISTRICT COLLECTOR, TIRUNELVELI.
4. THE INSPECTOR OF POLICE, ERVADI POLICE STATION, TIRUNELVELI.
5. THE DIRECTOR GENERAL OF POLICE, CHENNAI.
6. THE JOINT SECRETARY TO GOVERNMENT, PUBLIC (LAW AND ORDER)
FORT SAINT GEORGE, CHENNAI.
- 7 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER MADE IN
HCP [MD].No.1802 of 2017
04.01.2018