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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.09.2018

CORAM:
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.18711 of 2018

and

W.M.P.(MD)No16558 of 2018

Bharathi

... Petitioner

-Vs-

- 1.The State of Tamil Nadu,
represented by its Secretary,
Home Department, Fort St. George,
Secretariat, Chennai.
- 2.The Director General of Police,
Office of the Director General of Police,
Mylapore, Chennai - 04.
- 3.The Additional Director General of Police (Prisons)
C.M.D.A. Tower - II,
No.1, Gandhi Irvin Road,
Egmore, Chennai.
- 4.The Inspector General of Police,
Central Zone, Trichy.
- 5.The Deputy Inspector General of Police,
Office of the Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.
- 6.The Superintendent of Prison,
Trichy Central Prison, Trichy District.
- 7.The Superintendent of Police,
Office of the Superintendent of Police,
Nagapattinam District.
- 8.The Inspector of Police,
Sirkazhi police Station,
Nagapattinam District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus to direct the respondents to take immediate action to protect the life of the petitioner's husband by name Parthipan, son of Ramakrishnan, aged about 29 years, now confining at Trichy Central Prison from fake encounter, while he transmitting him from Trichy central prison to the trial Courts and to direct the respondents to take action to extend the judicial remand of the petitioner's husband through video conference from Trichy central prison.



For Petitioner : Mr.R.Alagumani
For Respondents : Mr.B.Bhagawathi,
Government Advocate (Crl. Side)

ORDER

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This writ petition has been filed for a direction to the respondent police to protect the life of the petitioner's husband and to take action for extension of remand of the petitioner's husband through Video Conference from Trichy Central Prison.

2.It is the case of the petitioner that the husband of the petitioner is now confined at Trichy Central Prison in Crime No.216 of 2018 for the alleged offences 147, 148, 302, 341 of IPC and Section 3, 4(a) of Explosive Substances Act 1908 and also under Section 3(1) of the Tamilnadu Public Property (Prevention of Damage & Loss) Act, 1992. The husband of the petitioner surrendered before the Judicial Magistrate, Salem, on 25.07.2018 and thereafter he was taken on police custody on 27.07.2018 for a period of five days and thereafter the husband of the petitioner is continuing to be in remand as a under trial prisoner.

3.The learned counsel for the petitioner would submit that there is a potential danger for the life of the husband of the petitioner in the hands of the police official and the close associates of the defacto complainant. The learned counsel for the petitioner would further submit that false complaint has been given against the petitioner's husband and he is made to appear before various Courts in Mayiladuthurai, Seerkazhi, Chidambaram, Madurai, Karaikkal, Omalur, Singanallur and Namakkal. Therefore, the apprehension is that when the husband of the petitioner is taken to any of those places, there is a potential danger to the life of the husband. Therefore, the learned counsel for the petitioner would submit that the remand of the petitioner's husband can be extended through Video Conference without taking him to the concerned Courts physically.

4.Per contra the learned Government Advocate (Crl. Side) would submit that the petitioner's husband is a history-sheeter and he has more than 19 cases pending against him. A counter affidavit has also been filed by the 8th respondent listing the cases that are pending against the petitioner's husband. The learned counsel further submitted that the so called danger to the life of the petitioner's husband is only a mere apprehension and the allegations made in that regard are false. Even, in the counter affidavit filed by the 8th respondent, it has been categorically stated that the arrangements will be made to take the petitioner's husband with a strong Escort party in a closed Escort vehicle. The learned counsel would further submit that insofar as the remand extension is concerned, the same can be done by video conference wherever such facilities are available. However, to effect the arrest of the petitioner's husband through PT warrant, the petitioner's husband



has to be necessarily produced before the Court physically and such arrest cannot be made by video conference.

5. This Court has taken into consideration the submission made on either side and also the materials placed on record. It is seen from the records that the petitioner's husband is facing serious charges against him and he has been involved in various offences which has been listed in the counter affidavit filed by the 8th respondent.

6. In the judgment passed in the case of K. Anandan Vs. K. Manoharan reported in (2015) 1 MLJ (Cr1) 332, this Court has considered the entire issue with regard to extension of remand through video conference. This Court has categorically held that a remand of accused under Sections 167 or under section 309 of the code would be made only on the production of the accused either in person or through the medium of electronic video linkage. No Magistrate Court shall remand an accused to custody without the production of the accused either in person or through the medium of electronic video linkage. In the said judgment, the Court has also dealt with extraordinary circumstances, where it will be appropriate for the Jail Authority to make a written request to the Magistrate concerned, who, in turn, may extend the remand of the accused under Section 309 Cr.P.C through video conference as it is done under proviso (b) to Sub Section 2 of Section 167 Cr.P.C. This Court has also cautioned that this should not become a routine practice for the Jail Authorities.

7. A Division Bench of this Court in Affiya Vs. State rep. by the Superintendent of Central Prison, Vellore reported in 2017 (3) MWN (Cr.) 384 (DB) also had an occasion to deal with the case of similar nature where the extension of a judicial custody can be made through a medium of electronic video linkage. The relevant portions in the judgment is extracted hereunder.

"29. It is no doubt true that the local amendment carried out by the State Legislature of Tamil Nadu brings out very clearly a categorical distinction in between the two limbs contained in Clause (b) of Sub-Section (2) of Section 167. While in the first limb, dealing with a situation of authorization/extension of police custody, the expressions used read as under :

"unless the accused is physically produced before ". Whereas in case of detention otherwise namely judicial custody, the expressions used are :

"unless the accused is produced before him either in person or through the medium of electronic video linkage.".

30. In other words, while authorizing or extending the police custody, the physical presence of the accused is insisted upon and there is no other mode of ensuring the presence of the accused is recognised whereas while



dealing with authorization or extension of custody otherwise than the police custody namely judicial custody, the Statute has recognised, to the extent feasible, the production of the accused person before the Magistrate to be secured. If, for any reason, the production of the accused person is not feasible, an alternative mode of production through video linkage is recognised. Thus, the physical production of the accused person is not insisted upon.

31. Providing for the alternative method itself in the second limb of Clause (b) of Sub-Section (2) is a recognition, in principle, that physical production of the accused securing for grant of extension of the judicial custody is not an indispensable feature. In other words, the Magistrate is required to satisfy that the conditions required grant of extension or authorization of the detention of the accused to custody otherwise than the police custody. Once he is satisfied that such conditions do exist, then he can authorize such grant of extension of custody. But however, the production of the accused should be ensured as far as it is feasible.

32. Take for instance, extraordinary circumstances prevailing, which can cause a fair and reasonable apprehension or hardship for production of the accused before the Magistrate. Some times, the situation of physical production of the accused can turn very volatile suddenly. Consequently, physical production of the accused, in certain types of cases, may not be considered as feasible or desirable or safe. When such volatile circumstances are prevailing in the society at large, it is not difficult to imagine where the conduct of a particular accused can create a backlash reaction in the society and consequently, to avoid public fury, it may be considered unsafe to produce such an accused person for seeking extension of his custody or for authorizing his judicial custody before the learned Magistrate.

33. Similarly, there can be disturbed conditions prevailing all due to some other factors, which may be totally unconnected with the accused. Even in such circumstances, production of the accused physically may not be feasible or advisable. Further, one has to take note specifically of the law and order requirements also. There may be special occasions like in the instant case, where the police forces have been deployed in large numbers in Tiruvannamalai because of the necessity to regulate any untoward incident occurring there, when lakhs of pilgrims are likely to throng Tiruvannamalai in



connection with an important festival there. With the result, large number of policemen may have to be deployed and so also the police vehicles will be pressed into service for that particular activity and it may not be really feasible to produce the accused for seeking extension of his custody on certain occasions, with very little police escort or without there being a safe transportation facility."

From the above judgment, it is clear that in certain extraordinary situations, where there is a real threat to the life of the accused person in detention, extension of remand can be made through video conference wherever it is available.

8. In the facts and circumstances of the case and taking into consideration the submissions made by the learned Government Advocate, this Court directs the extension of remand of the petitioner's husband to be made through video conference and in all cases where the respondent police wants to arrest the petitioner's husband through PT warrant, the accused person may be taken with a strong Escort in a vehicle to the concerned Court for the purpose of effecting the arrest. The discretion is given to the respondent police, to take into consideration the potential threat faced by the petitioner's husband and take a decision in accordance with law.

9. Accordingly, this writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Secretary,
Home Department, Fort St. George,
Secretariat, Chennai.
2. The Director General of Police,
Office of the Director General of Police,
Mylapore, Chennai - 04.
3. The Additional Director General of Police (Prisons)
C.M.D.A. Tower - II,
No.1, Gandhi Irvin Road,
Egmore, Chennai.
4. The Inspector General of Police,
<https://hcservices.ecourts.gov.in/hcservices/>
Central Zone,
Trichy.



5.The Deputy Inspector General of Police,
Office of the Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.

6.The Superintendent of Prison,
Trichy Central Prison, Trichy District.

7.The Superintendent of Police,
Office of the Superintendent of Police,
Nagapattinam District.

8.The Inspector of Police,
Sirkazhi police Station,
Nagapattinam District.

+1CC to Mr.R.Alagumani, Advocate, SR.No.83625

+1CC to the Special Government Pleader SR.No.83711

W.P. (MD) No.18711 of 2018
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