

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.265 of 2019

Mrs.R.Jamuna

.. Petitioner

-vs-

1. The Director General of Police
Police Head Quarters
Chennai
2. The Manager
Airport Authority of India
Chennai International Airport
Chennai
3. The Commandant
CISF, Chennai International Airport
Chennai
4. The Assistant Commandant
CISF, Chennai International Airport
Chennai
5. The Director General of Police
Police Head Quarters
Uttar Pradesh
6. The Superintendent of Police
Auraiya District Head Quarters
Auraiya, Uttar Pradesh
7. The Inspector of Police
Airport Police Station
Chennai
8. The Inspector of Police
T15 SRMC Police Station
Porur, Chennai

9. The Inspector of Police
Diviyapur Police Station
Auraiya District
Uttar Pradesh

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Habeas Corpus, directing the respondents to produce the petitioner's son R.Vignesh son of Rajagopal, aged 29 years before this Hon'ble Court and set him free.

For Petitioner :: Mr.M.Manivasagam for
M/s M.Manivasagam Associates

For Respondents :: Mr.C.Iyyappa Raj
Additional Public Prosecutor
for R1, R7 & R8

ORDER

(Order of the Court was delivered by M.SATHYANARAYANAN, J.)

The petitioner is the mother of the detenu, namely, R.Vignesh, S/o Rajagopal, also residing at No.78, Pugazhenth Street, Chelliyamman Nagar, Chennai 600 077. It is the specific case of the petitioner that the Sub Inspector of Police, namely, Mr.Jijendra Kumar Singh attached to Thana Dibiyapur Police Station, Uttar Pradesh, due to mistaken identity, had arrested her son, instead of one Karthikeyan, on 28.1.2019 at 10.15 AM. The petitioner would also contend that without obtaining the transit warrant from the jurisdictional Court here, and without intimating the arrest of her son/detenu, he was taken to Uttar Pradesh, in connection with Thana Dibiyapur Police Station Crime No.22 of 2019 registered for the alleged commission of offence under Sections 420 & 417 of IPC. The petitioner, aware of the fact that her son was to be taken to Dibiyapur through air transport, also approached the concerned CISF personnel at Chennai Airport and all her efforts, to stall the taking of her son to Uttar Pradesh, had failed. The petitioner also took a stand that when she made enquiries, she became aware of the fact that under pressure from some politicians at Uttar Pradesh, her son was taken and apprehending threat and danger to her son's life, came forward to file this habeas corpus petition.

2. The habeas corpus petition was entertained on 1.2.2019 and notices were ordered.

3. The learned counsel for the petitioner has filed the additional typedset of papers dated 26.2.2019 and would submit

that the Sub Inspector of Police, who effected the arrest of the petitioner's son, was also contacted on 29.1.2019 and he would state that the case in Crime No.22 of 2019 came to be registered for the commission of offence under Sections 420, 467, 468 & 471 of IPC and the person to be arrested is R.Karthikeyan, whereas the son of the petitioner is R.Vignesh, and therefore it is made very clear that due to mistaken identity, her son has been taken into custody. It is also brought to the knowledge of this Court by the learned counsel for the petitioner that the petitioner's son was produced before the jurisdictional Magistrate Court and was remanded to judicial custody on 31.1.2019, and the application for bail filed before the concerned Court at Uttar Pradesh also came to be dismissed and further steps are taken to file a fresh application or move the higher forum. The primordial submission made by the learned counsel for the petitioner is that the son of the petitioner, on account of mistaken identity, has been wrongly arrested and without adhering to the relevant provisions of the Criminal Procedure Code and that too, especially, without obtaining the transit warrant, he has been illegally taken into custody and therefore prays for appropriate orders praying for his release and restoration of his custody to the petitioner.

4. Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor for the State, on the time taken after arrest, would submit that the eighth respondent was informed as to the said arrest and his production before the Court of Chief Judicial Magistrate, Avuriya District at 16.00 hours on 29.1.2019 and admittedly, he has been taken to the said place by air. It is the further submission of the learned Additional Public Prosecutor that the time taken to produce the accused before the Court is to be excluded and in the light of the same, it cannot be said that, even after expiry of 24 hours, the detenu continues to be in illegal custody and detention at the hands of Thana Dibiyapur Police. It is also contended by the learned Additional Public Prosecutor that the present habeas corpus petition is not at all maintainable, for the reason that even as per the own admission of the learned counsel for the petitioner, the detenu has been produced before the jurisdictional Court in Avuriya District and has been remanded to judicial custody and the remedy open to the petitioner, if any, is to move the concerned Court for appropriate relief and prays for dismissal of the habeas corpus petition.

5. This Court has carefully considered the rival submissions and also perused the records.

6. In State of Maharashtra and others v. Tasneem Rizwan Siddiquee, (2018) 9 SCC 745, the maintainability of a habeas corpus petition in respect of a person who is in police custody

pursuant to a remand order passed by the jurisdictional Magistrate Court, came up for consideration before the Apex Court and it is relevant to extract paragraph-10 of the said judgment as follows:-

"10. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in *Saurabh Kumar v. Jailor, Koneila Jail*, (2014) 13 SCC 436 : (2014) 5 SCC (CrL.) 702 and *Manubhai Ratilal Patel v. State of Gujarat*, (2013) 1 SCC 314 : (2013) 1 SCC (CrL.) 475. It is no more *res integra*. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018, her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No.I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued."

7. Admittedly, in the present case, the arrest of the son of the petitioner was informed to the eighth respondent police station and though it is the primordial submission of the learned counsel for the petitioner that even after the expiry of 24 hours, the detenu was kept in illegal custody, the fact remains that he was produced before the jurisdictional Court on 31.1.2019 and was remanded to judicial custody, and admittedly the bail application filed for his release has also ended in dismissal and further efforts are on to secure his release in accordance with law.

8. In the light of the fact that on the date of filing of the habeas corpus petition, the detenu has been in custody, pursuant to the valid order of remand of the competent

jurisdictional Court, this Court is of the considered view that the present habeas corpus petition is not maintainable and therefore, it is dismissed. However, if the petitioner is so advised and if it is open to her in law, she is always at liberty to approach the competent forum to work out her remedy in accordance with law.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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Uttar Pradesh

10. The Public Prosecutor
High Court, Madras

+2cc to M/S.Manivasagam Associates, Advocate SR.17966

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srg 28/03/2019



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