

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M. NIRMAL KUMAR

H.C.P. No.353 of 2019

Mohammed Rikas @ Rikaz

... Petitioner

-vs-

1.The Additional Director General of Police &
Inspector General of Prisons,
Gandhi Irvin Salai,
Egmore, Chennai - 600 008.

2.The Superintendent of Prison,
Central Prison, Puzhal, Chennai - 600 066

3.The Superintendent of Prisons,
Central Prison,
Palayamkottai.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus for a direction to the respondents to produce the petitioner Mohammed Rikas @ Rikaz, S/o. Mohamed Hamsa, aged 24 years, convict prisoner, now confined in the Central Prison, Palayamkottai, Thirunelveli District before this Court and re-transfer from Central Prison, Palayamkottai to Central Prison, Puzhal, Chennai.

For Petitioner : Mr.P.Pugalenth

For Respondents : Mr.C.Iyyappa Raj
: Addl. Public
Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner, Mohammed Rikas @ Rikaz, S/o. Mohamed Hamsa, aged 24 years is the convict undergoing imprisonment for the offences committed by him and has come forward to file this Habeas Corpus Petition seeking a direction to the respondents to

produce him from the prison place in which he is confined as he was transferred on administrative grounds.

2. The learned counsel appearing for the petitioner submits that the transfer made from Central Prison, Puzhal, Chennai to Central Prison, Palayamkottai, Tirunelveli is arbitrary and contrary to the Rule 572 of Tamil Nadu Prison Rules, 1983 and without any basis, such a transfer has been effected. To buttress his submission, the learned counsel for the petitioner made reliance on the following decisions (i) Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others reported in (1981) 1 SCC 608; and (ii) A. Aruna v. The Additional Director General of Police and others order passed in H.C.P. No. 1707 of 2017 dated 05.10.2017.

3. The learned Additional Public Prosecutor, on instructions, submitted that for administrative reasons, the convict has been transferred. A copy of the communication sent by the Superintendent of Prisons, Central Prison, Puzhal, Chennai to the Office of the Public Prosecutor was also given. Thus, it is submitted by the learned Additional Public Prosecutor that the power has been exercised under Rule 568 as against Rule 572 of the Tamil Nadu Prison Rules, 1983 and, therefore, no interference is required.

4. As rightly submitted by the learned Additional Public Prosecutor, Rule 572 of the Tamil Nadu Prison Rules, 1983 does not impose any fetters on the powers of the respondents from transferring the prisoner on special reason. The same can be done on any other ground which should be reasonable and acceptable to the Court. Rule 572 of the Tamil Nadu Prison Rules, 1983 speaks about the prisoners transfer in the ordinary course. Therefore, a conjoint reading of Rule 572 and Rule 568 would make the position clear that the power of transfer is always there provided, the same has been exercised on certain grounds and giving special reasons.

5. In the case on hand, the materials furnished before us would clearly show that the convict was found in possession of Samsung Cell Phone, Sim Card, 4G Sim Card, Battery and Data Cable. The convict was also in the habit of using the aforesaid materials not only for his own purpose but to facilitate the use of other prisoners as well. These materials have been recovered from the petitioner which factum is not in dispute. Incidentally, action was also taken against the officials who are allegedly hand-in-glove with the petitioner. Such an act would certainly come within the purview of Rule 568 of the Tamil Nadu Prison Rules, 1983. Thus, we do not find any reason to allow this petition.

6. The judgments relied upon by the learned counsel for the petitioner do not have any application to the case on hand. In A. Aruna v. The Additional Director General of Police and others (supra), no material has been produced. Similarly, in Francis Coralie Mullin (supra), the Court was dealing with a case involving COFEPOSA violation. There is no consideration of pari materia rules we are dealing with in the case on hand.

7. In view of the above, the Habeas Corpus Petition stands dismissed. However, the dismissal of this petition will not stand in the way of the respondents considering the case of the petitioner afresh provided they are satisfied with the conduct and behaviour and for administrative reasons, he can be re-transferred back to Central Prison, Puzhal, Chennai.

s/d-
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

mmi/ssm

To

1. The Additional Director General of Police &
Inspector General of Prisons,
Gandhi Irvin Salai,
Egmore, Chennai - 600 008.

2. The Superintendent of Prison,
Central Prison, Puzhal, Chennai - 600 066

3. The Superintendent of Prisons,
Central Prison,
Palayamkottai.

4. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr. P. Pugalenthir, advocate sr 63095.

KK (CO)
SP (28/08/2019)

H.C.P. No. 353 of 2019