IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

H.C.P.No.452 of 2019

Shafiya .. Petitioner

Vs.

1.The Director
Central Bureau of Investigation
Chennai.

2.The Superintendent of GST & Central Excise
Preventive Section, Chennai North
Commissionerate, GST Bhavan
26/1, Mahatma Gandhi Road
Chennai – 600 034.

3.Directorate of Revenue Intelligence
Sastri Bhavan, Nungambakkam
Chennai.

4.The Dean
Royapettah Government Hospital
Chennai. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, to produce the detenu Mohammed Saleem, S/o.Abduk Rahman, aged 26 years by respondents 1 to 4.

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For Petitioner .. Mr.R.C.Paul Kanagaraj

For Respondents.. Mr.M.Venkateswaran
Special Public Prosecutor for GST & Central Crime [R1 & R2]
Mr.N.P.Kumar
Senior Standing Counsel [R3]
Mr.C.Iyyappa Raj
Additional Public Prosecutor [R4]

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ORDER

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

This Court, in continuation and conjuncture with the earlier order dated 28.02.2019, is passing the following order.

2. The wife of the detenu alleging that her husband was taken into illegal custody by the officials of Goods and Service Tax and Central Excise, came forward to file this Habeas Corpus Petition. Notice was ordered to the respondents 2 and 3, and the learned counsel appearing for the petitioner was also permitted to serve papers on Mr.N.P.Kumar, learned Senior Standing Counsel appearing for Directorate of Revenue Intelligence, and the matter was listed today for hearing.

3. The second respondent has filed the counter affidavit along with supporting documents and Mr.M.Venkateswaran, learned Special Public Prosecutor has drawn the attention of this Court to paragraph No.17 of the counter affidavit and would submit that in the light of the said fact, the detenu is not under illegal custody and detention, prays for dismissal of this Habeas Corpus Petition.

4. Mr.N.P.Kumar, learned Senior Standing Counsel appearing for the third respondent, on instructions, would submit that the Directorate of Revenue Intelligence (DRI) has nothing to do with the detention of the detenu.

5. Heard the submissions of Mr.R.C.Paul Kanagaraj, learned counsel appearing for the petitioner, who would submit, in the light of the stand taken by the second respondent in the counter affidavit dated 19.03.2019, the detenu shall be granted liberty to work out his remedy, in accordance with law.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. It is relevant to extract paragraph Nos.16 & 17 of the counter affidavit, as well as the order of remand passed by the learned Special Judge in NDPS cases at Mumbai :

> " 16. Counter reply to Para 5 and 6 of petition :- Based on investigation, documentary evidences, statements of other persons connected with the case Mohamed Saleem was interrogated and he has come forward to give voluntary statements dated 24.02.2019 and 25.02.2019 recorded under Section 67 of the NDPS Act,

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1985. He was placed under arrest on 25.02.2019 at 18.30 Hrs (Exhibit-G) at the Camp office of SIIB (Export), Mumbai at the office of the Principal Commissioner of GST and Central Excise, Chennai North Commissionerate, 26/1 Mahatma Gandhi Road, Chennai-600034, within the jurisdiction of this Hon'ble Court. Shri Mohamed Saleem's arrest was informed to his brother Jaffer Sadiq through Jainudeen being employee of Mohamed Saleem and Jaffer Sadiq. After the execution of the arrest, the Department was preparing papers to produce the accused before the Hon'ble Additional Chief Metropolitan Magistrate (ACMM), E.O.I., Egmore, Chennai by way of transit remand. In the meantime, the accused Shri. Mohamed Saleem started behaving in a violent manner after taking his dinner. All of a sudden he broke a glass window and inflicted injury in his body by glass piece to avoid further legal actions by the Officers. Then the Officers convinced him and given first aid and immediately taken to the SIMS Hospital in Nungambakkam for Treatment (Exhibit-H). SIMS Hospital gave the First Aid Treatment and the Hospital Authorities had advised the Officers to take him to the Royapettah Govt. Hospital since the patient is accused and already arrested by us. The Police authorities nearby were informed about the incidents and they have provided the adequate security. As advised by the SIMS Hospital Authorities, with the help of the security, the accused Shri. Mohammed Saleem was taken to Govt. Royapettah Hospital. The Doctors at Govt. Royapettah Hospital asked us to wait for some time to do thorough medical examination and wanted him to be kept on observation. They have discharged Shri. Mohammed Saleem on 26.02.2019 with discharge summary and he is 'Fit to travel' (Exhibit-I).

17. After incorporating the incident happened in the transit remand report he was produced before Hon'ble Additional Chief Metropolitan Magistrate (ACMM). E.O.I, Egmore, Chennai on 26.02.2019 at 4.30 PM. The incident of self-injuries by Shri Mohamed Saleem was brought to the notice of Hon'ble ACMM. Hon'ble Judge asked the accused about the injuries on his body and whether there was any ill treatment by the officers and he was also informed about the grounds for which he was arrested. The Hon'ble Judge was pleased to make this observation in the transit Remand order (Exhibit-J). After obtaining the order from the Court the Accused was once again taken before the Chief Medical officer, Rajiv Gandhi GH Hospital, Chennai for

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medical examination and medical certificate was issued by the Hospital Authorities (Exhibit-K). As there was no flight available to Mumbai on 26.02.2019, the next day morning i.e., on 27.02.2019 Shri Mohamed Saleem was taken to Mumbai by Jet Airways, flight No.9W 0464 at 9.45 AM and was produced before the Chief Medical Officer (CMO), St.George Hospital, Mumbai for medical examination and CMO issued a medical certificate (Exhibit-L). Thereafter, the accused Mohammed Saleem was produced before the Hon'ble Judge at the Special NDPS Court in the Sessions Court for Greater Mumbai, Fort, Mumbai on 27.02.2019. Here also, the Hon'ble Special NDPS Court's Judge have asked the accused Shri. Mohammed Saleem about ill-treatment by the officers for which he replied that there was no ill-treatment by the Officers. The Special Judge of NDPS Court of Greater Mumbai was pleased to make this observation in the Remand Order and ordered the accused Shri Mohammed Saleem to remand for judicial custody for 14 days till 13.03.2019 (Exhibit-M). Later, as per court order, the accused was taken to the Arthur Road, Central Prison, Mumbai and was lodged in Arthur Road Prison on 27.02.2019 at about 20:00 hours (Exhibit-N). In view of the above facts, the allegations made by the petitioner in Para 5 are factually wrong and baseless."

8. In the light of the said developments, it cannot be said that the detenu is under illegal custody or detention at the hands of second respondent. Therefore, this Habeas Corpus Petition stands dismissed. However, the detenu is so advised; if it is open to him under law, he is at liberty to work out his remedy in accordance with law, before the competent authority.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To:

1.The Director
Central Bureau of Investigation
Chennai.

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5. The Public Prosecutor
High Court, Madras.

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GJ II(CO)
GMY(30/04/2019)

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