

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2019
CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

Habeas Corpus Petition Nos.2454 and 2379 of 2019

M.Thenmozhi ... Petitioner in both H.C.Ps.

.. Vs ..

1. The Additional Director General of Police
and Inspector General of Prisons,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.
2. The Superintendent of Prisons,
Central Prison,
Vellore. ... Respondents in both H.C.Ps.

Prayer in H.C.P.No.2454/2019 :- Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to produce the body and person of the petitioner's uncle viz., Thiru.Murugan @ Sriharan, S/o.Vetrivel, aged about 49 years, a life convict, confined in the Central Prison at Vellore before this Court and to provide him proper medical treatment.

Prayer in H.C.P.No.2379/2019 :- Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to produce the body and person of the petitioner's uncle viz., Thiru.Murugan @ Sriharan, S/o.Vetrivel, aged about 49 years, a life convict, confined in the Central Prison at Vellore before this Court and to remove him from solitary confinement immediately and also to permit him to have interviews with the petitioner and his other family members including his wife in accordance with law.

In both H.C.Ps.

For Petitioner : Mr.M.Radhakrishnan
For Respondents : Mr.A.Natarajan,
State Public Prosecutor
Assisted by Mr.R.Prathap Kumar,
Additional Public Prosecutor

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COMMON ORDER

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

As both the Habeas Corpus Petitions have been filed by the same person seeking the similar relief and the issues are same, we dispose of both the petitions by way of common order.

2. The petitioner is the daughter-in-law of the Life Convict viz., Thiru.Murugan @ Sriharan, who is undergoing incarceration. Pursuant to a search conducted on 19.11.2019, certain prohibited materials, under Rule 298 of the Tamil Nadu Prison Rules, 1983, were stated to have been recovered from the Life Convict. Thereafter, a punishment has been imposed for a period of three months in accordance with Rule 3 of the aforesaid Rules. Incidentally, in order to take care of better administration and to avoid such incident, the uncle of the petitioner was shifted to Cell No.3, wherein cell phone deactivator [Jammer] has been erected for security purpose, in view of the fact that the uncle of the petitioner was in possession of cell phone along with sim card and chargers. Challenging the aforesaid decision made by the second respondent, the present Habeas Corpus Petitions have been filed.

3. Placing reliance upon the order passed by the Division Bench of this Court in H.C.P.Nos.1357 of 2011, dated 15.03.2012, the learned counsel for the petitioner submitted that before invoking Rule 302 of the Tamil Nadu Prison Rules, 1983, enquiry contemplated under Rule 304 of the Tamil Nadu Prison Rules, 1983, will have to be complied with. This has not been done in the case on hand. Therefore, punishment will have to go. Learned counsel for the petitioner further submitted that there is no need to shift the uncle of the petitioner.

4. Learned Public Prosecutor appearing for the State submitted that the punishment imposed is only for a period of three months. It is not as if as per the punishment imposed against the uncle of the petitioner [Life Convict], privileges given to him have been withdrawn. The uncle of the petitioner has been shifted to Cell No.3 for security reason which forms part of the administration, as in the said place, cell phone deactivator (Jammer) has been fixed and the aforesaid place is well ventilated and sanitary facilities were provided apart from other basic amenities. Even reputed political personalities were housed in the said place. Therefore, the above Habeas Corpus Petitions will have to

be dismissed.

5. On the first issue, we are in agreement with the submission made by the learned counsel for the petitioner. On the very same issue, this Court was pleased to hold in the judgment referred to supra that, without conducting an enquiry contemplated under Rule 304 of the Tamil Nadu Prison Rules, 1983, an order under Rule 302 of the Tamil Nadu Prison Rules, 1983 cannot be passed. Admittedly, in the case on hand also, no enquiry has been conducted. After all, the uncle of the petitioner merely wants to meet his wife, who is also undergoing incarceration. The Life Convict has been enjoying the privileges. Therefore, looking from any perspective, we are of the view that the removal of the privileges for a period of three months cannot be sustained in the eye of law. Accordingly, we are inclined to hold that the uncle of the petitioner is entitled to the privileges enjoyed by him.

6. On the second issue, we are in agreement with the submission made by the learned Public Prosecutor appearing for the State that this decision has been made for security reason and for over-all better administration and hence, we do not find fault with the aforesaid submission. It is not as if the uncle of the petitioner can only be kept in a particular Cell. There are 13 other prisoners kept in the same block. Cell No.3 also contains basic amenities. Perhaps, the second respondent can review the situation after some time.

7. In such view of the matter, we are not inclined to interfere with the aforesaid decision. However, depending upon the future conduct and behavior of the uncle of the petitioner, the second respondent shall review the decision made on the second issue after a period of four months, in accordance with law. The statement made by the learned counsel for the petitioner that he would advise the uncle of the petitioner not to undertake a hunger-strike is also recorded.

8. In view of the above, the relief sought for by the petitioner for medical treatment has become infructuous.

9. With the above observations, both the Habeas Corpus Petitions shall stand disposed of.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Additional Director General of Police
and Inspector General of Prisons,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.

2. The Superintendent of Prisons,
Central Prison,
Vellore.

3. The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.M.Radhakrishnan , Advocate SR.No. 94551,94550

H.C.P.Nos.2454 and 2379 of 2019

A.SK(18/12/2019)



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