

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2019

CORAM:

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

H.C.P.No.2451 of 2018

Alima ... Petitioner

Vs.

1.The State, represented by
The Superintendent of Central Prison
Thiruchirapally
Trichy District.

2.The Deputy Superintendent of Police
Counter Feit Currency Wing
Egmore, Chennai - 600 008. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, to direct the respondents to produce the detenu RAFEEL, son of Kaja Mohideen, aged about 34 years, now confined at Central Prison, Thiruchirapally, before this Court and set him at liberty

For Petitioner .. Mr.R.Sankarasubbu

For Respondents.. Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu named Rafeel, who is now confined in Central Prison, Thiruchirapalli. The detenu is one of the accused concerned in C.C.No.49 of 2014 on the file of Special Court for Unlawful Activities Act 1967 cum Additional Sessions Judge, Chennai. The detenu along with other accused are prosecuted for commission of offences under Section 498 (B) (C) IPC read with 25 (1-B) (a) of Arms Act and Section 15(1) (a)(iiia) read with 16(1)(b) of the Unlawful Activities (Prevention) Act, 1967.

2. The grievance now expressed by the petitioner is that on behalf of co-accused Babu alias Shahul Hameed, S/o. Kaja Mohideen, who is arrayed as A2 in C.C.No.49 of 2014, his wife named Affiya has moved before this Court in HCP.No.801 of 2017, and the Division Bench of this Court has passed an order dated 14.07.2017, directing the trial Court to consider his application for enlargement on bail and the said Habeas Corpus Petition was disposed of accordingly. It is further stated in the affidavit filed in support of this petition that the detenu had moved bail petitions before the trial Court as well as before this Court and the said petitions were dismissed. Hence, the petitioner is before this Court, filing this Habeas Corpus Petition, praying that the detenu may be enlarged on bail.

3. Mr.Sankarasubbu, learned counsel appearing for the petitioner has reiterated the above facts and also has drawn the attention of this Court to HCP.No.801 of 2017, which was filed by the wife of one Babu alias Shahul Hameed, who is arrayed as A2 in C.C.No.49 of 2014, and vide order dated 14.07.2017, the Division Bench of this Court directed the trial Court to consider his bail application, wherein, he has also placed reliance on the judgment rendered by the Supreme Court of India, in Criminal Appeal Nos.11 and 12 of 2017, which is filed against the order dated 10.4.2015 in Crl.A.No.1657 of 2014, passed by the High Court of Bombay in Sagar Tatyaram Gorkhe and another Vs. State of Maharastra, and on laying emphasis on Sagar Tatyaram case, the Division Bench of Court has passed the following order in HCP.No.801 of 2017:

"5. We, therefore, follow the same dictum and accordingly direct the Trial Court to immediately consider enlarging the detenu on bail after hearing the objections, if any, or the learned Public Prosecutor and then also impose appropriate and suitable conditions for enlarging the detenu on bail. We also consider it appropriate to direct the Trial Court to complete the trial as expeditiously as possible, at any rate, before 15th of November 2017 and to achieve this objective, unnecessary adjournments of the case be avoided and even if necessary, to adjourn the case, the case may be adjourned by reasonably shorter duration as is considered appropriate by the Trial Court."

4. The learned counsel for the petitioner would further submit that in connection with a case in CBCID, OCU-II, Cr.No.01 of 2018, the detenu has been arrayed as A3 and that he had filed an application seeking statutory bail before XI Metropolitan Magistrate, Saidapet, Chennai in Cr.M.P.No.1923 of 2018 and vide

order dated 23.10.2018, he was let out on conditional bail, and in so far as Babu alias Shahul Hameed (the detenu in HCP.No.801 of 2017), who is arrayed as A2, has moved before the V Additional Sessions Judge, Chennai seeking bail and vide order dated 06.07.2018 in Crl.MP.No.9966 of 2018 in C.C.No.49 of 2014, he was released on bail with certain stringent conditions, which are as follows

- i. Bail is granted
- ii. Petitioner is ordered to be released on bail on him executing a bond for Rs.1,00,000/- with two other sureties for the like sum, who should be his close blood relatives.
- iii. The petitioner shall appear and sign before the respondent Office daily at 9.00 a.m, 1.00 pm & 6.00 pm until further order.
- iv. The petitioner shall not leave Chennai City jurisdiction without prior permission of this court.
- v. The respondent police is directed to watch the activities of the petitioner/accused and if any deviation or violation of the conditions imposed by this court is noted, that has to be immediately reported to this court for cancellation of the bail.

5. The learned counsel would further urge that during trial of the case, the prosecution is taking time to produce the witnesses, to conduct enquiry and for examination of witnesses and that they are not adhering to the time limits, and therefore, the detenu is languishing in prison, and he would further add that the detenu has already been commissioned in two other cases and that he has already been enlarged on bail and hence prays for appropriate orders for setting the detenu at liberty.

6. Per contra, Mr.C.Iyyaparaj, learned counsel has drawn the attention of this Court to the written objection dated 10.12.2018 filed by the second respondent and would submit that the detenu is involved in the following criminal cases :

1	NIA-RC.No.2/2014/NIA/HYD u/s.15,17,18,20 of UAP Act & 120 (b) 24, 124(A) & 489 (C) IPC - Pending trial
2	R1 Mambalam PS Cr.No.1210/2007, u/s.420 IPC - Credit Card Cheating - Convicted

1	NIA-RC.No.2/2014/NIA/HYD u/s.15,17,18,20 of UAP Act & 120 (b) 24, 124(A) & 489 (C) IPC - Pending trial
3	Thiruvottiyur PS Cr.No.768/2009, u/s.395, 397, 120(b) IPC - A case of dacoity - PT
4	CCB 343/2010 - Credit Card Cheating
5	Periyapalayam PS 338/2011 - 397 IPC
6	Cholavaram PS Cr.No.337/2013, u/s.302 IPC - A case of drunken brawl - 8 accused involved - Rafiq is A3 - Arrested

He would further state that since the trial of the case is nearing its conclusion stage and only four witnesses alone have to be examined, and at this final stage, this Court granting extension of time would have adverse impact on the case, and further taking note of the bad antecedents of the detenu, this Court shall not pass favourable orders in this Habeas Corpus Petition for setting the detenu at liberty.

7. This Court has carefully considered the rival submissions and perused the materials placed on record.

8. This Court, while disposing of the Habeas Corpus Petition in HCP.No.801 of 2017, has taken note of the decision rendered by the Supreme Court in Sagar Tatyaram Gorkhe and another Vs. State of Maharashtra, cited supra and directed the trial Court to expedite the trial. However, the fact remains that, despite such direction came to be passed by this Court as early as 24.07.2017, the prosecution is not able to complete the examination of the witnesses till now, and as on today, four witnesses are yet to be examined and according to the learned Additional Public Prosecutor, out of the two Investigating Officers who are in witness box, one officer is on leave.

9. In the light of the above facts and circumstances, it cannot be said that on account of non-completion of trial, the detenu is said to be in illegal detention, and however, this Court is of the considered view that in the light of the period of incarceration being undergone by the detenu as a trial prisoner, it would be fit and proper to grant liberty to the petitioner to move an application for bail before the trial Court, and upon filing of the said application, the learned trial Judge shall entertain the same, if the papers are otherwise in order, and after putting the prosecution on notice,

and after eliciting their objections, the trial Judge shall consider and dispose of the bail application filed by the detenu on merits and in accordance with law, within a further period of three weeks from the date of entertainment of the said application.

10. Though the earlier petition filed before this Court seeking detenu's enlargement on bail was dismissed, this Court is now inclined to grant permission the petitioner to move a bail application before the jurisdictional trial Court and accordingly, this Habeas Corpus Petition is disposed of with the above observations.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

- 1.The Superintendent of Central Prison
Thiruchirapally
Trichy District.
- 2.The Deputy Superintendent of Police
Counter Feit Currency Wing
Egmore
Chennai - 600 008.
- 3.The V Judge,
Additional Sessions Judge, Chennai.
- 4.The Public Prosecutor
High Court, Madras.

Copy to

The XI Metropolitan Magistrate,
Saidapet.

+1cc t Mr.R.Sankarasubbu, Advocate sr.23110

H.C.P.No.2451 of 2018

srg 25/03/2019