



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT, MADURAI
Friday, the Twenty Sixth day of July Two Thousand Nineteen
Present

The Hon`ble Mr.Justice M.SATHYANARAYANAN

AND

The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) . No.2470 of 2019
in
H.C.P. (MD) No.1857 of 2017

UDAYAKALA,

... Petitioner/petitioner

Vs

1 THE SPECIAL DEPUTY COLLECTOR,
MANDAPAM REFUGEE CAMP MANDAPAM
RAMANATHAPURAM DISTRICT

2 Q BRANCH CID,
O/O.THE Q BRANCH CID
RAMANATHAPURAM DISTRICT

... Respondent/Respondent

Prayer :-

This petition filed under article 226 of Constitution of India to fully relax the condition imposed on the detenu Thayararaj in HCP(MD)No.1857 of 2017 dated 02.03.2018.

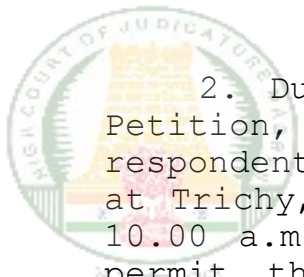
Prayer in Habeas Corpus Petition(MD) No. . 1857/ 2017 :

This petition filed under article 226 of Constitution of India seeking a direction to the respondents to produce the person or the body of the detenu/the petitioners husband namely Thayararaj aged about 36 years before this Honourable Court and set him at liberty.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Ms. A.RAJINI, Advocate for the Petitioner and of Mr. K.DINESH BABU , Additional Public Prosecutor for the respondents, this Court made the following order:

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

The petitioner is the wife of the detenu, viz., Thayararaj, S/o Kathirvelu, aged about 37 years and on earlier occasion, she filed H.C.P.(MD)No.815 of 2016 praying for issuance of Writ Habeas Corpus, directing the respondents viz., the Collector of Trichirappalli District and the Superintendent of Police, Q Branch CID, Chennai-600 004 and the Commissioner of Police, Trichirappalli City, to produce the person, or body of her husband before this Court and set him at liberty.



2. During the course of arguments in the said Habeas Corpus Petition, it was submitted on behalf of the State that the respondents are prepared to arrange accommodation to the petitioner at Trichy, so as to enable her to visit the detenu every day from 10.00 a.m., to 05.00 p.m. and that it would not be possible to permit the detenu to stay with the petitioner and family at Mandapam, on account of security reasons, for the reason that in that event, it will not be possible for the police to watch the movement of the detenu.

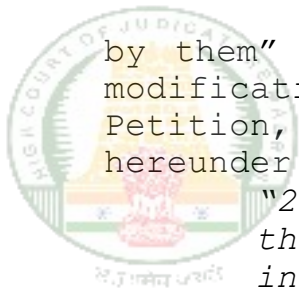
3. This Court has also taken note of the submission that the detenu was earlier involved in a case in Crime No.27 of 2014, under Section 14 of the Foreigners Act, 1946 and Section 3(a) r/w 6(a) of the Passport (Entry into India) Rule, 1950, which resulted in his conviction by the learned Judicial Magistrate, Rameswaram and the detenu has also undergone the imprisonment and he was released on 08.10.2015.

4. Earlier, the Division Bench, after taking note of the records, observed that the State is also taking steps to deport the petitioner and the detenu to Sri Lanka, pursuant to the request made by the Foreign Government and also taking note of the submission made by the learned Additional Advocate General that the Home Department has already taken up the issue with the Government and every effort would be taken to deport the detenu and the petitioner to Sri Lanka at the earliest and accordingly, passed the following order and it is relevant to extract hereunder the relevant portion of the said order:

"11. We direct the Joint Secretary to Government, Public (SC) Department, Government of Tamil Nadu and the respondents to transfer the detenu, by name Thayapararaj from the Special Camp at Trichy to the house allotted to the petitioner bearing Door No.OB-20/2 in Mandapam Refugee Settlement at Ramanathapuram in Ramanathapuram District forthwith and in any case, by 05.00 p.m., on 13 July, 2016. The movement of the detenu after transfer would be curtailed, in view of the pending proceedings initiated to deport him to Sri Lanka."

5. Thereafter, the petitioner filed H.C.P.(MD)No.1857 of 2017, praying for the very same relief as that of the prayer made in H.C.P.(MD)No.815 of 2016.

6. The Division Bench of this Court, after taking note of the stand of the official respondents in the counter affidavit, in paragraph No.22 of the order, has observed that "it is the prerogative of the State to impose appropriate condition upon the petitioner, her husband, who are claimed to be refugees / foreigners, to ensure the safety and security of the nation. But, here is the case, where originally round the clock security has been ordered by this Court and the petitioner needs modification and relaxation in the light of bitter experience allegedly suffered



by them" and in paragraph No.23, made the following observation, modification and direction and disposed of the Habeas Corpus Petition, vide order dated 02.03.2018. It is relevant to extract hereunder the same:

"23. Under the status circumstances, we are of the view that the conditions imposed earlier have to be relaxed in the light of the possibility of intervention by using technology. Accordingly, the earlier order stands modified and the following conditions are imposed:

(i) The petitioner's husband shall appear and sign before the learned Judicial Magistrate No.I, Ramanathapuram twice a week, i.e., on each Monday and Friday at 10.30 a.m., and in case anyone of the day is a holiday, he shall appear before the Court on the next/previous working day;

(ii) The petitioner shall provide the telephone number used by her and by her husband to the respondents and the Government is at liberty to exercise power under Section 5 of Indian Telegraph Act;

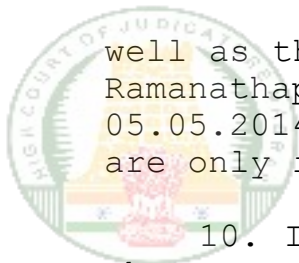
(iii) The Government is also permitted to exercise all such powers of monitoring the activities of the petitioner and her husband by using technology and other means, excepting through physical surveillance.

With the above observation, modification and direction, the Habeas Corpus Petition stands ordered in the above terms."

7. The present Criminal Miscellaneous Petition is filed by the petitioner seeking modification of the order, by stating among other things that the detenu is appearing before the learned Judicial Magistrate No.I, Ramanathapuram between 12.03.2018 and 04.03.2019, for the past one year, without any default and on personally, it is stated that the family of the detenu and the petitioner is without any livelihood support and they are having four children and the detenu is also suffering due to lung disease and therefore prays for complete relaxation of the condition imposed by this Court, vide order order dated 02.03.2018, made in H.C.P.(MD)No.1857 of 2017.

8. However, the said plea is strongly opposed by the second respondent, by filing counter affidavit, dated 04.06.2019.

9. In the counter affidavit, it is contended among other things that the petitioner as well as the detenu reportedly engaged themselves in human trafficking in Sri Lanka and cheated many Sri Lankan Tamils in Sri Lanka and collected huge amount on the assurance of sending them to foreign countries. In this connection, a case in Kirulappanai Police Station of Sri Lanka was registered in Cr.No.B2713/3/2014 and that apart, NCB Colombo (INTERPOL) also declared the detenu and the petitioner as wanted suspects and issued notices through INTERPOL, vide reference Number A&SP/Sri Lanka/26/2015 and in order to escape from the clutches of law and to evade arrest by Sri Lankan Police, the petitioner as



well as the detenu had illegally ferried from Sri Lanka and reached Ramanathapuram seashore along with their three children on 05.05.2014 and therefore, their status cannot be refugees, but they are only illegal entrants to this Country.

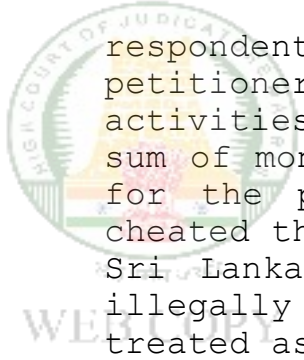
10. It is further stated in the counter affidavit that both of them were prosecuted by Dhanushkodi Police Station in Cr.No.27/2014 under the Foreigners Act, 1946 and the relevant provisions of the Passport (Entry into India) Rule, 1950 and a charge sheet was filed and they were convicted and the learned Judicial Magistrate also ordered to deport them to Sri Lanka in accordance with law or to keep them in the refugee camp, after completion of the period of sentence till their deportation and after the completion of sentence, the detenu was lodged in Cheyyar Special Camp, Thiruvannamalai District on 08.10.2015 to restrict his movement as per Government Order under Section 3(2)(e) of the Foreigners Act, 1946 and later transferred to Trichy Special Camp on 04.03.2016 and the petitioner was lodged in Quarantine Camp, Mandapam, Rameswaram, on 31.10.2015.

11. In paragraph No.3 of the counter affidavit, the second respondent took a stand that the petitioner's husband is appearing and signing before the Judicial Magistrate No.I, Ramanathapuram regularly and the petitioner has not yet provided the telephone number used by her and her husband as directed by this Court and also took a legal plea that the fundamental rights of the foreigners are confined to Article 21 for life and liberty and does not include the right to reside and settle in this Country and also placed reliance upon the decision rendered by the Constitution Bench of the Honourable Supreme Court of India in **Nurenborg V. Superintendent, Presidency Jail, Calcutta**, reported in **AIR 1955 SC 367**.

12. In sum and substance, it is the stand of the second respondent that the petitioner as well as her husband viz., the detenu, did not enter into India as refugees, but only as illegal entrants and further pointed out that they had entered illegally into this Country, in order to escape from the clutches of law of Sri Lanka Police authorities and therefore, they are not entitled for any relaxation.

13. The learned Counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents filed in support of this petition and would submit that as per the Consultant Radiologist of KGS Advanced MR, CT Scan and Ultra sound Doppler scan, the detenu is also suffering due to left kidney calculus and that apart, the petitioner is having four children without any support and therefore, prays for complete relaxation of the conditions imposed by this Court, vide order date 02.03.2018 made in H.C.P.(MD)No.1857 of 2017.

14. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State, apart from drawing the attention of this Court to the counter affidavit of the second



respondent, dated 04.06.2019, would vehemently contend that the petitioner as well as the detenu had indulged in criminal activities in Sri Lanka and they were accused of collecting huge sum of money, even from their own brothers viz., Sri Lankan Tamils for the purpose of sending them to foreign countries and also cheated them and in order to escape from the clutches of law of the Sri Lankan Police Authorities, they escaped from Sri Lanka and illegally entered into this Country and therefore, they may not be treated as refugees and in the absence of the refugees status, they are not entitled to claim any legal or equitable right. He would further add that the steps are under contemplated to abort them to Sri Lanka also.

15. A perusal of the counter affidavit would disclose that the petitioner as well as her husband viz., the detenu are facing prosecution for very serious offences, for which NCB Colombo (INTERPOL) had also issued notices and in order to escape from the clutches of law, they appeared to have entered into India illegally, for which, they were also prosecuted and convicted.

16. The learned Additional Public Prosecutor, on instructions, would submit that the petitioner no longer remained in the camp, in which they also managed to escape and as of now, their whereabouts are not known and all out efforts have been taken to trace them.

17. In the considered opinion of this Court, in the light of the criminal antecedents of the petitioner as well as the detenu and their subsequent conduct of having escaped from the camps, in which they were ordered to be secured, they are not entitled to any further indulgence from this Court.

18. The State is directed to take all out and serious efforts to trace the petitioner as well as the detenu and take immediate and necessary steps to deport them to Sri Lanka, in accordance with law.

19. It is not a fit case wherein the prayer sought for by the petitioner in this Criminal Miscellaneous Petition to be granted. Therefore this petition is dismissed.

Sd/-

Assistant Registrar()

// True Copy //

Sub Assistant Registrar(CS)

TO

1. The Home Secretary,
Union of India, Ministry of Home Affairs,
North Block, Cabinet Secretariat,
Raisina Hill, New Delhi - 110001.



2. The Principal Secretary
Home Department,
Government of Tamil nadu,
Secretariat, Chennai-600 009.

3. The Director General of Police,
Post Box NO.601,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

4. THE SPECIAL DEPUTY COLLECTOR,
MANDAPAM REGUGEE CAMP MANDAPAM
RAMANATHAPURAM DISTRICT

5. Q BRANCH CID,
O/O.THE Q BRANCH CID RAMANATHAPURAM DISTRICT

+1CC TO MR.A.RAJINI, Advocate Sr. No. 78296

ORDER DATED : 26/07/2019

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ORDER
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CRL MP(MD). No.2470 of 2019
in
H.C.P.(MD)1857/2017

Giving direction and etc.
as stated within.

KM(CO)
TR (07.08.2019) 6P 7C