

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

H.C.P. No. 1123 of 2020

B. Chellammal, F/A. 47 years,
W/o. A. Balu,
No. AP 1446, New No. 58,
1st Sector 2nd Street,
K.K. Nagar, Chennai 600 078. Petitioner/Wife of Detenue

Vs.

The Superintendent of Prison,
Central Prison - 1,
Puzhal, Chennai 66. Respondents

PRAYER: This Petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, directing the respondent to consider the representation of the petitioner dated 20.06.2020, to produce the petitioner's husband namely A. Balu, S/o. Azhagarsami, Ct.No.2438, aged about 54 years, now confined in the Central Prison - 1, Puzhal, Chennai 600 066, before this Court for set off the remand periods from 15.11.2001 to 15.02.2002 and 23.03.2009 to 15.05.2009 under Section 428 of Cr.P.C. and set him at liberty.

For Petitioner : Mr. P. Pugalenthir

For Respondents: Mrs. M. Prabhavathi,
(Additional Public Prosecutor)

ORDER

(Order of the court was made by N.KIRUBAKARAN,J.)

The matter is heard through "Video Conferencing".

2. The Habeas Corpus Petition has been filed seeking a direction to consider the representation dated 26.06.2020 of the petitioner, who is wife of the convict to set-off the remand

periods from 15.11.2001 to 15.02.2002 and 23.03.2009 to 15.05.2009, under Section 428 of Cr.P.C.

3. Heard the parties and perused the materials available on record.

4. A counter affidavit has been filed stating that the convict was detained in Central Prison - 2, Puzhal, as a remand prisoner from 29.11.2001 to 15.02.2002. The said period was not included in the trial court remand warrant. However, it is admitted in Paragraph No.4 of the counter affidavit that the convict served as a convict prisoner in the prison from 23.03.2009 to 14.05.2009. The said Paragraph No.4 reads as follows:

"4] Further, with regard to the issue of remand set-off raised by the petitioner, it is submitted that there is no mention of remand period or remand set-off in the conviction warrant issued by the IV Additional Sessions Court dated 08.07.2019. However, as per the information received from the Superintendent of Prisons, Central Prison-2, Puzhal, vide letter No.5159/R1/2020 dated 21.07.2020, it is learnt that as per the prison records, the prisoner was admitted in Central Prison-2, Puzhal as remand prisoner on 29.11.2001 and subsequently, was released on bail on 15.02.2002 on the orders of the learned IX Metropolitan Magistrate Court, Saidapet. It is submitted further that, after the Hon'ble High Court had confirmed the conviction and sentence of the prisoner in CA No. 668/2004, the prisoner was admitted in this prison as a CONVICT PRISONER on 23.03.2009 and was released on bail on 14.05.2009 on the orders of the Hon'ble Apex Court in CA. No. 820, 821 and 824 of 2009 and CMP No. 7311, 7312, 7318 of 2009. So, the period from 23.03.2009 to 14.05.2009 which the prisoner has served as convict prisoner is already added to his imprisonment period, and it is not omitted from calculation as alleged by the petitioner in this paragraph."

From the above, it is clear that the convict already served as a convict prisoner from 23.03.2009 to 14.05.2009, as admitted by the respondent and there is no issue with regard to the same.

5. As far as the period from 15.11.2001 to 15.02.2002 is concerned, though the petitioner has stated that the period from 15.11.2001 to 15.02.2002 has to be added as the convict has already served as remand prisoner during the conviction period, in Paragraph No.4 of the counter, it has been stated that the

convict was detained in Central Prison - 2, Puzhal, as a remand prisoner only from 29.11.2001 to 15.02.2002. Hence, suo-motu they cannot include the said period unless it is stated in the remand warrant. Since the remand warrant is said to be missing when the old Central Prison was shifted to Puzhal Prison, it has become necessary for this Court to issue a direction to the respondent to treat the period from 29.11.2001 to 15.02.2002 as conviction period, which he has already undergone.

Accordingly, this petition is ordered.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Superintendent of Prison,
Central Prison - 1,
Puzhal, Chennai 66.
- 2.The Public Prosecutor,
Madras High Court,
Chennai.

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