

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

H.C.P.NO.1643 OF 2020

Sengkodi .. Petitioner

vs

1. The State of Tamil Nadu
rep. by its Deputy Superintendent
of Police, Q Branch CID,
Dharmapuri.

2. The Superintendent of Prisons,
Spl. Central Prison (Women),
Thiruchirappalli,
Thiruchirappalli District.

.. Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus directing the respondents to produce the detainee Chandra, wife of Sundaramurthy, now confined in Central Prison (Women), Thiruchirappalli, before this Court and set her at liberty.

For Petitioner .. Mr.R.Sankarasubbu

For Respondents.. Mr.R.Prathap Kumar,
Addl.Public Prosecutor

ORDER

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

The petitioner, who is a practising lawyer before this Court has come forward to file this habeas corpus petition on behalf of the under trial prisoner facing trial in Special C.C.No.5 of 2003 pursuant to the cases registered in Crime Nos.1004, 1005, 1006 and 434 of 2002. The aforesaid cases are clubbed together and pending trial.

2.We do not wish to go into the merits of the case as they are to be considered before the jurisdictional Court viz., the Special Court for Bomb Blast Cases, Poonamallee (POTA) in Special C.C.No.5 of 2003.

3.Mr.R.Sankarasubbu, learned counsel appearing for the petitioner submitted that a writ of habeas corpus petition is maintainable when a under trial prisoner is made to suffer prolonged incarceration. There cannot be a mechanical remand from time to time. Such a person cannot be allowed to languish in prison when the similarly placed accused were released. The law as laid down by the Apex Court in Shaheen Welfare Association Vs. Union of India and Others ((1996) 2 SCC 616) is mandatorily to be followed.

4.Learned counsel further submitted that the detenu is not averse in filing an application seeking enlargement on bail before the jurisdictional Court. The said Court was not functioning at the time of filing the present petition. If such a petition is filed, the same has to be considered on its own merit and in the light of the law laid down by the Apex Court, taking into consideration the relevant materials including the orders passed in favour of the similarly placed persons in the same crime number and without taking note of the order to be passed in this petition. In this context, the learned counsel has made further reliance upon the order of the Division Bench in CrI.A.No.377 of 2014 dated 23.09.2014 (Ragini @ Bharathi Vs. State rep. by Deputy Superintendent of Police, Q Branch CID, Tirupathur Range, Dharmapuri District).

5.Learned Additional Public Prosecutor appearing for the respondents submitted that the very same counsel has filed the habeas corpus petitions on the earlier occasion before this Court in HCP Nos.142 of 2008 and 1067 of 2012. In the aforesaid cases, the habeas corpus petitions finally were dismissed inter alia holding that the petitioner cannot be permitted to do so. In any case, the habeas corpus petition is not maintainable even otherwise in view of the law laid down by the Apex Court in State of Maharashtra and Others Vs. Tasneem Rizwan Siddiquee ((2018) 9 SCC 745). Further, the case involving the detenu before us is very serious and therefore, even on merits, no case is made out.

6.In the light of the submissions made, especially the subsequent submission made by the learned counsel appearing for the petitioner that the detenu before us would file a petition before the concerned jurisdictional Court and therefore all the issues to be left open, we are not inclined to go into the other issues. This we do so notwithstanding the statement made in para 9 of the affidavit filed by the respondents by quoting the

earlier orders passed by this Court in HCP Nos.142 of 2008 and 1067 of 2012. Suffice it to observe that the detenu/accused is at liberty to file appropriate petition before the jurisdictional Court as aforesaid. As and when such a petition is filed, the said Court is expected to pass a reasoned order considering all the materials both on fact and law placed before it by the accused and as well as the prosecution. This would include the judgments relied upon as aforesaid which would be inclusive of the order dated 23.09.2014 in CrI.A.No.377 of 2014.

7. Accordingly, the habeas corpus petition stands closed with the observation that it is open to the accused to file appropriate petition before the jurisdictional Court. As and when the same is filed, it would be decided on its own merit by considering the relevant materials placed before it and obviously without being influenced by any of the observations made in this petition.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1. The Deputy Superintendent
of Police, Q Branch CID,
Dharmapuri.
2. The Superintendent of Prisons,
Special Prison for Women,
Thiruchirappalli,
Thiruchirappalli District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No.34652

H.C.P.No.1643 of 2020

MG(CO)
CS/03/12/2020