

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.17546 of 2014
(heard through VC)

K.Veeraraj @ Velusamy

... Petitioner

Vs

1.The Chief Secretary
Government of Tamil Nadu
Secretariat, Chennai - 09

2.The Secretary
The Social Welfare Department
Secretariat, Chennai - 09

3.The Director General of Police
Mylapore, Chennai

4.The Superintendent of Police
Thiruvannamalai District
Thiruvannamalai

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, directing all the respondents to take appropriate action on the petitioner representation dated 14.03.2014 regards to give compensation for petitioner detention as trial prisoner for a long period of 3 years, also for restrained the petitioner right to live under Article 21 of the Constitution of India.

For Petitioner : Mr.A.Ramesh Manikandan

For Respondents: Mr.V.Shanmuga Sundar,
Spl. GP for R1 to R4

O R D E R

The petitioner has sought for a Writ of Mandamus, directing all the respondents to take appropriate action on his representation dated 14.03.2014 with regard to compensation for his detention as trial prisoner for a long period of 3 years, and also for having restrained the petitioner right to live under Article 21 of the Constitution of India.

2. The case of the petitioner is that, he was working as a clerk in an Advocate office and also selling Law Books near the Court of Judicial Magistrate, Polur. While so, one Mr.Settu @ Govindhaswamy, made a complaint against him alleging that he had used filthy language and tried to assault him with a pen-knife on 16.9.2009. A case was registered in Crime No.1527 of 2009 on the same day and the petitioner was remanded to the Central Prison, Vellore. Bail petition moved by the petitioner on 02.09.2010 was dismissed by the learned Assistant Sessions Judge, Arani. Again he made a bail application in Crl.M.P. No.2011/2011 before the learned Sessions Judge at Tiruvannamalai District stating that P.R.C. was numbered as S.C. No.74 of 2010. The said petition was also dismissed. In the meanwhile, a charge-sheet was filed and the trial had commenced. After the conclusion of trial, on 17.08.2012, the petitioner was acquitted by the learned Assistant Sessions Judge, Arani and he was released from prison on 18.08.2012.

3. According to the petitioner, he is an innocent person and based on a fake complaint, he was detained in prison for 2 years and 11 months i.e. nearly three years as an under-trial prisoner without prima facie case under Section 307 IPC. The petitioner states that his right under Article 21 of the Constitution of India was breached and that he is entitled for a compensation for being detained in the prison for close to three years. A representation was sent on 14.03.2014 for the same.

4. The learned counsel for the petitioner contended that the petitioner was detained by the respondents for no fault of his, as he had been acquitted from the case, after trial. Though he has stated that his bail application was dismissed twice before the Sessions Court, there is nothing on record to show whether the petitioner moved any bail application before this court. It was alleged by the learned counsel for the petitioner that the bail applications of the petitioner were deliberately opposed by the respondents and therefore, he had to languish inside the prison.

5. The learned Special Government Pleader had filed the counter affidavit of fourth respondent, as per which, it is stated that S.C. No.74/2010 was taken up for trial by the learned Assistant Sessions Judge, Arani, Tiruvannamalai District. The witnesses, whoever had seen the crime, had made statements that the complaint is true and when the trial had commenced, the witnesses had turned hostile and the benefit of doubt was given to the petitioner and he was acquitted. A perusal of the judgment in Sessions Case No.74/2010 would show that the learned Assistant Sessions Judge, Arani, gave a finding that, as per the evidence of PWs.1 to 6 and their cross examination, it has been found that the petitioner, who was the

first accused, had an altercation and that he had tried to attack PW1. However, it was held that he was acquitted on the ground that the petitioner did not have the intention to assault or attack the complainant.

6. No doubt, the petitioner is the victim of a legal system, who had to undergo imprisonment and was later acquitted after spending at least three years in jail and had lost his respect and faced agony. The petitioner, as a prisoner in jail, will not have any respect in the society. The under-trial prisoners across the country are higher than the number of convicts inside the prison. Under trial prisoners are those persons who are facing trials in the competent courts. There is no separate jail in prisons in India for under trials and the convicts. When bail is refused for an under trial prisoner, they are kept in prison, so that they cannot influence the witness or tamper any evidence, which will ensure fair trial.

7. How to protect the rights of the under trials? Of the pending cases across the country, almost 85% of the cases are in Magisterial Courts. In fact, the large number of under trials in jail without sentence is posing a big challenge to the prison management. As mentioned above, the reasons for keeping an under trial in jail are : (1) the crime being heinous and grave ; (2) the accused likely to commit the same or other offence ; (3) likely to influence or interfere with the witness ; or (iv) the accused may fail to appear for trial.

8. In many of the countries, the under trials are given special status that prisoners without sentence are deemed to be innocent and shall be treated as such till such time, he/she is proved guilty according to law in a trial.

9. In a majority of cases, it is only the poor and the disadvantaged society, who are unable to furnish the bonds for release or unaware of the judicial remedy of seeking a bail in court. The prolonged detention only violates the right to liberty guaranteed to every citizen under the Constitution of India. It also amounts to breach of human right of freedom of movement to these vulnerable sections of the society. It is needless to say that this neglected segment of society, who languish in the jails as under trials need the probation, care and consideration of law. The treatment of under trials in the prison is certainly not satisfactory as their human rights are violated. As mentioned earlier, they are the victims of delayed legal system, as they are (i) mostly lodged with the convicts ; (ii) more number of adjournments given in the courts; (iii) delay in trial ; (iv) many a times confinement is more than the sentence ; and (v) false implication, etc.,. Treating the under trials on a par with convicts itself is a gross violation of human rights.

10. The petitioner, who had been failed by the legal system, though may be compensated or rehabilitated, in the absence of any system in place, his claim cannot be entertained. It is for the Central or the State Governments to introduce any such scheme for the under-trial prisoners, who ultimately are acquitted to get some rehabilitation to restore the lost dignity in the society. In the absence of any such scheme available as on date, the petitioner is not entitled to any relief for compensation for his detention as under-trial prisoner for a period of three years.

11. In view of the above, the writ petition has to fail and the same is dismissed. However, there shall be no order as to cost.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Asr

To

- 1.The Chief Secretary
Government of Tamil Nadu
Secretariat, Chennai - 09
- 2.The Secretary
The Social Welfare Department
Secretariat, Chennai - 09
3. The Director General of Police
Mylapore, Chennai
- 4.The Superintendent of Police
Thiruvannamalai District
Thiruvannamalai

+1 CC to Mr.A.Ramesh Manikandan, Advocate sr 30636.

PD(CO)
SP(16/10/2020)