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THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 17.12.2019

Order Pronounced on : 13-01-2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Habeas Corpus Petition No. 2671 of 2019

Ilian Zdravkov Markov
Son of Zdravkov Markov
Special Camp
Kottapattu Refugee Camp
Central Prison Complex
Tiruchirapalli District

.. Petitioner

Versus

1. The State represented by
Home Secretary
Secretariat, Fort St. George
Chennai - 600 009
2. The Principal Secretary to Government
Public (Foreigners-II) Department
Secretariat, Fort St. George
Chennai - 600 009
3. The Commissioner of Police
Greater Chennai
Vepery, Chennai
4. The Inspector of Police
Central Crime Branch
Bank Fraud Wing
Vepery, Chennai
(Crime No. 160 of 2019)
5. The Deputy Collector
Refugee Camp
Central Prison Complex
Tiruchirapalli District

.. Respondents



Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Habeas Corpus to call for the records of the detention order passed by the second respondent - Principal Secretary to Government, Public (Foreigners-III) Department on 03.08.2019 bearing G.O. No. (1D) No.345, C. No. 363/DC-CCB-1/ I.S./2019 against the petitioner and quash the same and direct the respondents to produce the petitioner - Ilian Zdravkov Markou, Son of Zdrakov Markov, Christian, aged 53 years before this Court and set him at liberty.

For petitioners : Mr. P.T. Perumal

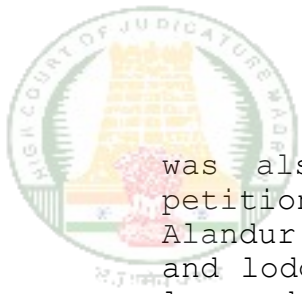
For respondents : Mr. R. Prathap Kumar
Additional Public Prosecutor

ORDER

R. Subbiah, J

The Petitioner, a Citizen of Republic of Bulgaria, has come forward with this Habeas Corpus Petition praying to call for the records of the detention order passed by the second respondent bearing G.O. No. (1D) No.345, C. No. 363/DC-CCB-1/ I.S./2019 dated 03.08.2019 against the petitioner and quash the same and direct the respondents to produce the petitioner - Ilian Zdravkov Markou, Son of Zdrakov Markov, Christian, aged 53 years before this Court and set him at liberty.

2. The petitioner is a Citizen of Republic of Bulgaria and is a Psychologist by profession. The petitioner came to Chennai, India, as a Tourist on 25.04.2019 with a Visa having validity for two months. After reaching Chennai, India, the petitioner stayed at Hotel Holiday Inn., Taramani. According to the petitioner, during the course of such stay, he befriended another Bulgarian by name Peter Petrov who was staying in hotel Citadines OMR Apart Hotel, Sholinganallur, Chennai. While so, based on a complaint given by the Manager of the Hotel where Mr. Peter Petrov was staying, the fourth respondent police arrested the above said Peter Petrov on 08.05.2019 and a case in Crime No. 160 of 2019 was registered against him for the offences punishable under Section 120 (b), 420, 465, 467, 468, 471 of Indian Penal Code read with Section 66 and 43 of Information Technology Act. After such arrest, when the said Peter Petrov was interrogated, he disclosed his friendship with the petitioner herein and immediately, the third respondent police visited the hotel where the petitioner was staying and arrested him. According to the petitioner, upon his arrest, he was made to sign certain statements, the contents of which were not known to him and he was also not allowed to read the contents of such statement. The passport and driving licence of the petitioner



was also seized by the Police officials. Thereafter, the petitioner was produced before the learned Judicial Magistrate, Alandur on 09.05.2019 and he was remanded to judicial custody and lodged in Central Prison, Puzhal, Chennai. According to the learned counsel, the petitioner is no way connected with the alleged commission of offence and he only had a friendly acquaintance with Mr. Peter Petrov and that by itself will not be construed as an offence under Law.

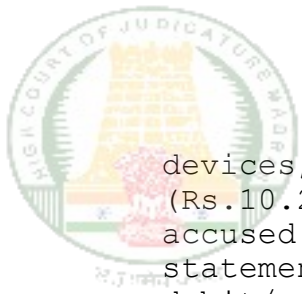
3. The petitioner would further contend that the third respondent did not file a charge sheet within the statutorily permitted period of 90 days and therefore, the petitioner was granted statutory bail under Section 167 (iii) of the Code of Criminal Procedure on 07.08.2019 by the learned Judicial Magistrate, Alandur. On the same day, the release bond was executed by the petitioner and it was also duly communicated to the Superintendent of Prisons, Central Prison, Puzhal, Chennai. However, instead of releasing the petitioner, the fourth respondent had taken the petitioner to the Refugees Camp situated within the Central Prison Complex, Tiruchirapalli where he is detained illegally till date. Hence, the petitioner earlier filed HCP No. 1868 of 2019 before this Court praying to direct the respondents therein to produce the petitioner before this Court and to set him at liberty. When HCP No. 1868 of 2019 was taken up for hearing on 06.09.2019, the petitioner was served with a copy of the order dated 24.07.2019 directing the petitioner to be kept in the Special Camp, Tiruchirapalli in the event of his release from prison. It was further stated that the movement of the petitioner is restricted by detaining him in the Special Camp at Trichy. It was also ordered that the petitioner shall not leave the boundaries of the Special Camp at Tiruchirapalli except with the prior permission of the District Collector, Tiruchirapalli. Therefore, this Court disposed of the HCP No. 1868 of 2019 on 06.09.2019. Thereafter, challenging the aforesaid order dated 24.07.2019, which was served on the petitioner on 03.08.2019, the present Habeas Corpus Petition has been filed.

4. The learned counsel for the petitioner would contend that the respondents did not adhere to the procedural formalities prior to the arrest and detention of the petitioner and therefore, the entire proceedings preceding the order dated 24.07.2019 of the second respondent are vitiated. According to the learned counsel for the petitioner, Section 3 (1) (e) (i) of The Foreigners Act, 1946 mandates that the respondents ensure that the petitioner is permitted to reside in a particular place. Further, as per Section 3 (4) of the National Security Act, the officer concerned ought to have informed the factum of arrest of the petitioner to the State Government along with the grounds on which the order has been passed within the time



specified therein. Section 3 (5) of the National Security Act stipulates that the State Government has to get approval from Central Government within seven days. As per Section 10 of the National Security Act, the grounds on which the petitioner was detained has to be communicated. The learned counsel for the petitioner also stated that as per Article 36 of The Vienna Convention on Consular Relations, 1963, the 'receiving State' is required to inform the arrest to the 'sending State' without delay, but such a procedure has not been followed in this case. However, the aforesaid mandatory procedures have not been complied with by the respondents and therefore he prayed for allowing the Habeas Corpus Petition as prayed for.

5. The learned Additional Public Prosecutor appearing for the respondents, by referring to the Interim report filed on behalf of the respondents, would contend that one Mr. M. Sanjeev Kumar, working as Cluster Loss Prevention Manager has given a written complaint to the Commissioner of Police, Greater Chennai stating that on 13.04.2019, Mr. Peter Patrov has booked a room through online and he was allotted room No.423 at fourth floor of the hotel for his stay on 01.05.2019. On 01.05.2019 evening Mr. Peter Patrov checked into room No.423. While so, on 08.05.2019, Mr. Peter Patrov made payment by using a membership card in the swiping machine for extending his stay for one more day. The complainant suspected the card transaction and confronted him about the risk involved in accepting the blank debit/credit card without the name of the issuing bank. The complainant therefore decided to check the charge slip and their account details to ensure whether the amount was credited. Based on the transaction approval through charge slip, the complainant confirmed that Rs.3,902.86 has been approved by the transacted bank. At that time, it was noticed that Mr. Peter Patrov was in possession of multiple membership cards without the name of issuing banks. Therefore, the complainant suspected that Mr. Peter Patrov is indulging in some unlawful activities and made a complaint to the Commissioner of Police. On the basis of such a complaint, a case in Crime No. 160 of 2019 was registered against Peter Petrov and he was arrested on 08.05.2019. Based on his confession, the petitioner was also arrested on the allegation that he had fraudulently and dishonestly stolen the debit/credit data including PIN number of the customers in their Home Town Bulgaria by using skimmer device and preserved the same in the laptop and pen drives. Therefore, according to the learned Additional Public Prosecutor, the petitioner and the above said Peter Patrov hatched a criminal conspiracy to create cloning cards by using the data clandestinely stolen from innocent bank customers and withdrawn money from various bank ATMs by using such fabricated cards. The learned Additional Public Prosecutor also submitted that during the course of investigation, Encoding and De-coding



devices, Cloned Digital Banking Cards, Indian Currencies (Rs.10.25 lakhs) and EURO currencies were seized from the first accused - Peter Patrov. Further, on the basis of confession statement given by the petitioner/A-2, decoder, fake debit/credit cards, Indian Currency to the tune of Rs.1.34 lakhs, Encoder machine and D-ling machines were seized.

6. The learned Additional Public Prosecutor also contended that even though the petitioner was granted bail on 07.08.2019 and he has also executed surety bond on 08.08.2019, the respondents were of the firm belief that if the petitioner is let scot free, he will indulge in similar offence. Therefore, the investigation officer sent a proposal to the government through proper channel to impose restriction on the movement of the petitioner as contemplated under Section 3 (2) (e) of The Foreigners Act, 1946 based on which the Government passed the order in G.O. (1D) No.345 dated 24.07.2019 to detain the petitioner in the special camp. Further, during the detention of the petitioner in the Special Camp, the petitioner suffered abdominal pain and he was admitted in Mahatma Gandhi Memorial Government Hospital, Trichy on 19.11.2019 where he was treated as in-patient till 23.11.2019. The petitioner was advised to take upper GI endoscopy by the Surgical Gastroenterologist of the hospital, however, he was not willing to undergo such a procedure and was discharged from the hospital on his own volition on 23.11.2019. Subsequently, the petitioner was sent to Stanley Hospital, Chennai as per the proceedings of the District Collector, Tiruchirapalli dated 04.12.2019 where the petitioner was treated from 02.20 hours till 14.00 hours on 06.12.2019. After such treatment, the petitioner was discharged from the hospital and on the same day he was lodged in the Special Camp at Tiruchirapalli. The learned Additional Public Prosecutor therefore submitted that the petitioner was detained in the Special Camp where his movement alone is restricted. The petitioner cannot be released from the Special Camp until his deportation to his Home Town. The respondents have complied with all the mandatory procedures preceding the arrest as well as detention of the petitioner in the Special Camp and therefore, he prayed for dismissal of the Habeas Corpus Petition.

7. We have heard the counsel for both sides and perused the materials placed on record. The petitioner came to Chennai, India on 25.04.2019 with a Visa having validity for two months. During the course of his stay, a case in Crime No. 160 of 2019 was registered against one Mr. Peter Petrov and on the basis of the confession statement given by the above said Mr. Peter Petrov, the petitioner was arrested and remanded to judicial custody. The petitioner was thereafter granted bail on 07.08.2019, by which time, the Visa given to the petitioner had expired. Therefore, the respondents, on the basis of the orders



passed by the Government detained the petitioner in the Special Camp at Tiruchirapalli. Such an order has been passed in compliance with Section 3 (2) (3) of Foreigners Act which require the petitioner to be accommodated in a particular place as may be earmarked by the Government. In the present case, in the order dated 24.07.2019, the District Collector, Tiruchirapalli District was assigned the task of identifying a place for detention of the petitioner and accordingly, the petitioner was detained in the Special Camp at Tiruchirapalli. In fact, by the said order dated 24.07.2019, the petitioner as also the above said Petar Petrov were ordered to be detained in a place to be identified and located by the District Collector, Tiruchirapalli in the event of their release from prison until their deportation. This would only indicate that until the procedural formalities relating to the petitioner's deportation are completed, the petitioner was ordered to be detained in the Special Camp to facilitate his deportation. This is more so that the Visa granted to the petitioner had expired long back. In such circumstances, the question of illegal detention of the petitioner does not arise. The detention of the petitioner in the Special Camp pursuant to his alleged involvement in the criminal case cannot be construed as an illegal detention or the grant of bail in favour of the petitioner will entitle the petitioner to be set at liberty. In fact, there is no absolute prohibition for the petitioner to move from one place to another. The order dated 24.07.2019 says the petitioner shall not leave the camp except with permission of the District Collector, meaning thereby, the petitioner can move on grant of permission. Thus, the order dated 24.07.2019 has been passed by the second respondent in compliance with Section 3 of Foreigners Act and taking note of the imminent necessity to deport the petitioner from India. We therefore hold that the petitioner cannot be construed to be in illegal detention and as such, the relief sought for in this Habeas Corpus Petition cannot be granted.

8. In the result, the Habeas Corpus Petition is dismissed.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1. The State represented by
Home Secretary
Secretariat, Fort St. George
Chennai - 600 009
2. The Principal Secretary to Government
Public (Foreigners-II) Department
Secretariat, Fort St. George
Chennai - 600 009
3. The Commissioner of Police
Greater Chennai
Vepery, Chennai
4. The Inspector of Police
Central Crime Branch
Bank Fraud Wing
Vepery, Chennai
(Crime No. 160 of 2019)
5. The Deputy Collector
Refugee Camp
Central Prison Complex
Tiruchirapalli District.

+2cc to Mr.P.T.Perumal, Advocate, SR.Nos.99284 & 3141.

Order in
HCP No. 2671 of 2019

BS (CO)
CSR: 20.02.2020