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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 27.02.2020

Orders Pronounced on : 04.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.2460 of 2019

Jeyachandran

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary,
Public (Foreigners.I) Department,
Secretariat, Fort St.George,
Chennai-600 009.

2. The District Collector and Camp Officer,
Special Camp for foreigners,
Central Prison Campus,
Tiruchirapalli.

3. The Inspector of Police,
Central Crime Branch,
Chennai.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus to call for the entire records in connection with the order of detention passed by the first respondent in G.O.(1D). No.336, dated 19.07.2019 and set aside the same as illegal and consequently direct the respondents to produce the body and person of the detenu, viz., Prince Mathuram Cornelius, son of Jeyachandran, aged about 46 years, now confined at Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli, before this Court and set him at liberty.

For petitioner : Mr.V.Ramamurthy

For respondents: Mr.R.Prathap Kumar, Addl.P.P.



ORDER

R.SUBBIAH, J

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This Habeas Corpus Petition is filed by the petitioner praying for issuance of a Writ of Habeas Corpus to call for the entire records in connection with the order of detention passed by the first respondent in G.O.(1D).No.336, dated 19.07.2019 and set aside the same as illegal and consequently direct the respondents to produce the body and person of the detenu, viz., Prince Mathuram Cornellus, son of Jeyachandran, aged about 46 years, now confined at Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli, before this Court and set him at liberty.

2. The petitioner's son, i.e. the detenu Prince Mathuram Cornellus is an Overseas Citizen of India (OCI). He was born on 18.06.1972 at Valparai and his birth was duly registered by the Registrar of Birth and Death, Valparai, Coimbatore. He is an Indian citizen by birth. The detenu studied in Tamil Nadu and completed his SSLC (Xth Std) at G.K.N. Higher Secondary School, Pungamuthur, Coimbatore District. He completed his HSC (XII Std.) at M.S.P.N. Memorial Higher Secondary School, Dingidul. Thereafter, he completed his B.E. (Mechanical Engineering) Degree at Karunya Institute of Technology, affiliated by the Bharathiyar University, Coimbatore, during the academic years 1989-1993. After completing his studies, he left for London and secured a job as Network Administrator in a Company, namely Novasoft Europe at London. Subsequently, he independently started an educational institution, namely a College called as Carmel College of Excellence in London and the same is being run till date. The detenu got married one Helina of Nazerth, Tirunelveli District and she expired on 19.02.2018 in Tirunelveli.

3. It is the further case of the petitioner that the detenu's brother, namely Godwin was involved in an offence on the file of the third respondent in Crime No.207 of 2019 and the said case was originally registered under Sections 420, 468 and 471 IPC. It has been altered into the provisions of the Passports Act. The detenu was implicated in this case based on the confession of his brother Godwin. The detenu was arrested by the third respondent and was under judicial custody for more than 60 days. According to the petitioner, since the third respondent could not collect any material as against the detenu to prove the complicity of the detenu in the alleged crime committed by the other accused, he was granted bail on



27.08.2019 by the learned Special Metropolitan Magistrate for CCB and CB-CID cases, Egmore, Chennai in CrI.M.P.No.9760 of 2019 for the alleged offences under Sections 12(1)(b) and 12(2) of the Passport Act, read with Section 420, 468 and 471 IPC. The final report is yet to be filed in that case. While so, now the detention order was passed when he is under judicial custody. The detenu was detained on 19.07.2019 by the impugned order, in the Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli, against which, the present Habeas Corpus Petition is filed for the relief stated supra.

4. The learned counsel for the petitioner submitted that the very fact that the detention order was passed when the detenu is under judicial custody, would show that the impugned detention order is passed without application of mind by the detaining authority. This reason alone is sufficient to set aside the impugned detention order. Though the petitioner was conferred with British Citizenship, he did not intend to lose his original nationality and therefore, he applied for OCI, and he was granted Overseas Citizenship by the Union of India and a Certificate of Registration in OCIC.No.A2387278 was issued to that effect at London on 18.01.2017. Therefore, the detenu has right to stay in India for any length of time without reporting to the Police authorities. The petitioner's son/detenu cannot be treated as a Foreigner and hence, the impugned detention order is unconstitutional and violative of Articles 14, 21 and 22 of the Constitution of India and the Citizenship Act.

5. In the above context, the learned counsel for the petitioner invited the attention of this Court to Section 7-A of the Citizenship Act and submitted that it deals with the registration of the OCI and Section 7-B of the said Act confers a right on the OCI and Sections 7-C and 7-D provide for revocation and cancellation of the OCI. Therefore, it is clear that unless there is violation of any of the condition as specified in Sections 7-B, 7-C and 7-D, the right and liberty conferred on the OCI can't be curtailed or interfered with. The detenu was already released on bail after accepting the surety bonds executed by two sureties and one of the sureties is the petitioner before this Court. The Passport of the detenu has already been handed over to the third respondent. There is no possibility of the detenu leaving India. The detention order passed by the detaining authority is patently illegal and is liable to be set aside.



6. Countering the above submissions, the learned Additional Public Prosecutor, appearing for the respondents, submitted that on the complaint of one Thiru.Arun, Sub-Inspector of Police, Fake Passport Team, Central Crime Branch, Chennai-7, a case in Chennai Central Crime Branch Cr.No.207 of 2019 under Sections 12 (1-A)(b) and 12(2) of the Passport Act read with Sections 420, 468 and 471 of IPC, was registered against the detenu on 28.06.2019 for his involvement in the process of getting UK Visas in a fraudulent manner, by submitting fake documents. He was arrested along with the other three accused persons, namely Godwin, Prabhakar and Rasa @ Rasakrishnan for having sent three persons, namely Vimal, Vinoth and Vijay to London with the Visas obtained in a fraudulent manner by submitting fake documents. Among the three, Vijay was intercepted at London, on knowing this fact, all the accused persons planned to go underground and hide in Bangalore. They were caught in front of Hotel Ashoka, Egmore, Chennai, on 28.06.2019 and were found in possession of passports, seals of various banks and fake documents, company letter pads and gadgets. On enquiry, they admitted that they were in possession of various materials used to get the Visa by submitting fake bank statements, income tax filing papers, company letters, etc. On investigation, the respondents came to know that the detenu was born in Valparai on 18.06.1972 and is a B.E. Mechanical Engineer by qualification and settled with his family in London. In the year 2003, he started a College, namely Carmel College of Excellence in London and procured students for that College with the help of his brother Godwin from Chennai. In the year 2007, the detenu became a citizen of United Kingdom of Great Britain and Northern Ireland. He has a GBR Passport No.544819099. He renounced his Indian citizenship in the year 2009 and became OCI. By virtue of having held previous Indian Nationality, a foreigner is eligible for registration as OCI on the basis of his Indian origin. OCI card is a lifelong multiple entry Visa, issued to foreigners who fulfil eligibility conditions as per Section 7-A of the Citizenship Act and hence, the detenu is a foreigner holding UK Nationality, OCI card and is only a life long Visa to enter India and does not confer Indian Citizenship. Section 3-A of the Foreigners Act, exempts citizens of Common-Wealth Countries and other persons from application of the Act in certain cases and states that the Central Government, may, by order, declare that all or any of the provisions of this Act or of any order made thereunder shall not apply or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order, to or in relation to: (a) the citizen's of any such Common Wealth country as may be so specified or (b) any other individual foreigner or class or



description of foreigner. A copy of every order made under this Section, shall be placed on the table of both the Houses of Parliament as soon as may be after it is made. In this case, the Central Government has not declared exempting the detenu from the Foreigners Act, and hence, the contention of the petitioner that Foreigners Act will not apply to Common Wealth Nation, is false. All legal formalities were observed when the Government Order was served on the detenu.

7. It is further submitted by the learned Additional Public Prosecutor appearing for the respondents that a look-out circular was issued by the Delhi Police on his British Passport and he went to Nepal illegally and from there, he flew away to London. He returned to India using the same way. With the help of the other accused, viz., Rasa @ Rasakrishnan, Prabhakar and Godwin, he obtained London Visas for many persons using fake documents to settle them at London. He entered India illegally, via Nepal, lastly on 12.06.2019. The accused persons, including the detenu, were arrested and remanded to judicial custody by the Metropolitan Magistrate, Special Court for CCB and CB-CID Court, Egmore, Chennai on 28.06.2019. The Sections relating to the offences, were altered to Section 12(1-A) (b) and 12(2) of the Passport Act and under Section 14 of the Foreigners Act, read with Sections 420, 468 and 471 IPC. Based on the report and proposal of the Commissioner of Police, Intelligence (Internal Security), Chennai, the Deputy Inspector General of Police, Intelligence (Internal Security), Chennai, had requested the Government Order under Section 3(2)(e) of the Foreigners Act, to restrict the movement of the detenu, an UK National, in Tiruchirapalli Special Camp, in the event of releasing him from prison, till deportation. The detenu was granted conditional bail by the learned Metropolitan Magistrate for CCB and CB-CID cases, Egmore, Chennai in CrI.M.P.No.9760 of 2019 in CCB Cr.No.207 of 2019, dated 27.08.2019. The learned Additional Public Prosecutor appearing for the respondents thus stated that the impugned order is passed with proper application of mind and only after careful consideration of the proposal of the Commission of Police, Greater Chennai Police, received through the Deputy Inspector General of Police, Intelligence (Internal Security), Chennai, to prevent him from going underground and to ensure his physical availability at all times for expeditious repatriation, after completion of Court case pending against him, and hence, there is no violation of the provisions of the Constitution of India or the Citizenship Act, as contended by the petitioner, and if the detenu is released from the Special Camp, he may continue to indulge in illegal activities, which are prejudicial to the Internal Security of the Nation. Thus, the learned Additional Public Prosecutor prayed for dismissal of



the Habeas Corpus Petition.

8. Keeping in mind the submissions made on either side, we have carefully perused the entire materials available on record.

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9. It is the main submission of the learned counsel for the petitioner that the detenu is an OCI and he cannot be construed as a foreigner and when that being the case, absolutely there is no power for the first respondent to detain the detenu as a foreigner. In this regard, it would be appropriate to refer an order passed by a learned Single Judge of this Court in the case of G.Karunairaj Vs. State of Tamil Nadu, represented by the Secretary to Government, Public Department, in W.P.No.27221 of 2011 and by order dated 29.02.2012, the learned Single Judge set aside the order challenged therein lodging him in the Special Camp, and as against the said order passed by the learned Single Judge, the Secretary to Government, Public Department, Secretariat, Chennai, preferred a Writ Appeal in W.A.No.651 of 2012 and a Division Bench of this Court, by judgment dated 26.11.2013, held that, on a careful scrutiny of the entire materials placed before it, and upon consideration of the factual and legal positions, the Division Bench was of the view that the reasons assigned by the learned Single Judge for quashing the impugned Government Order, are unsustainable on facts and in law and is of the opinion that the opportunity of personal hearing need not be afforded before passing an order directing the writ petitioner to stay in a Special Camp and observed that the impugned order passed therein is correct and the petitioner therein is liable to be kept in the Special Camp therein as a regulatory measure.

10. Further, it is also useful to refer a case in Momin @ Momimwar Hussain @ Md. Monwar Hussain Vs. State of Tamil Nadu, represented by the Principal Secretary to Government, Public Department, in W.P.No.1141 of 2019 praying to quash the lodging order, and by order dated 28.03.2019, a learned Single Judge of this Court dismissed the said Writ Petition, holding as follows:

"21. It is well settled that the order passed under Section 3(2)(e) is not an order of preventive detention, as claimed by the petitioner. In fact, paragraph No.5 of the impugned order would show that the petitioner and other persons against whom such order was passed, shall not leave the boundaries of special Camp at Trichirapalli except with prior permission of the District Collector, Trichirapalli District. Therefore, their movements are not restricted within four

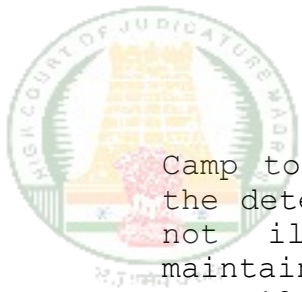


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walls of a room and on the other hand, it would show that such restriction is not an absolute prohibition. The above aspect has also been considered by the Division Bench in Kalavathy's case (1995 (2) LW (Cr1) 690 (Kalavathy Vs. State of Tamil Nadu)), wherein at paragraph No.24, it has been observed as follows:

"24. There is no absolute prohibition to move from one place to another. The orders say that the inmates shall not leave the Camp except with permission of the District Collector. In other words, they can move on grant of permission. The dimensions of freedom to move throughout the territory of India available for a citizen, is not the same for a foreigner. Having regard to the particular explosive situation prevalent in the country, it is only reasonable that restrictions of this sort are sought to be imposed. Such imposition can never be stated to be arbitrary or capricious exercise of power, violating the mandate of Articles 14 and 21 of the Constitution. As already stated, there is a fallacy in the argument that the orders become bad in the absence of fixation of definite periods of stay in the special refugee camps, for each order is not one of detention but only one of detention but only one of reasonable restriction."

11. We are in full agreement with the view taken by the learned Single Judge in the above said order of this Court in W.P.No.1141 of 2019. Further, the abovesaid judgment of the Division Bench of this Court in W.A.No.651 of 2012 also applies to the case on hand. In the case on hand, only as a regulatory measure, the detenu is being kept in the Special Camp. In the event of the release from prison, till deportation, his movement is being restricted. Therefore, this would show that until the procedural formalities relating to the detenu's deportation are completed, the detenu is ordered to be detained in the Special



Camp to facilitate his deportation. Therefore, the detention of the detenu by the impugned order, is not illegal, and when it is not illegal, the Habeas Corpus Petition itself is not maintainable.

12. Thus, when there is no illegal detention, the question of considering his prayer to release him, does not arise. Therefore, the Habeas Corpus Petition is liable to be dismissed. Accordingly, the same is dismissed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The State of Tamil Nadu,
Rep. by its Principal Secretary,
Public (Foreigners.I) Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The District Collector and Camp Officer,
Special Camp for foreigners,
Central Prison Campus,
Tiruchirapalli.
3. The Inspector of Police,
Central Crime Branch,
Chennai.
4. The Public Prosecutor, High Court, Madras.

H.C.P.No.2460 of 2019

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