



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 27.02.2020**

**DATE OF DECISION : 09.11.2020**

**CORAM**

**THE HONOURABLE MR.JUSTICE T.RAJA**

**AND**

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**H.C.P. (MD)No.44 of 2020**

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Athinarayanan

S/o S.Palsamy

.. Petitioner

-vs-

1. The Inspector General of Prison  
Chennai Metropolitan Development  
Authority Tower-II  
No.1, Gandhi Irwin Road  
Egmore, Chennai 600 008

2. The Superintendent of Central Prison  
Trivandrum Road  
Vasantha Nagar, Palayamkottai  
Tirunelveli District 627 007

3. The Superintendent  
Borstal School  
Tahsildar Office Complex  
Trichy Road, Melur  
Madurai District 625 106

4. The Inspector of Police  
East Police Station  
Virudhunagar 626 001

5. The Commissioner of Police  
Tirunelveli City  
(R5 suo motu impleaded vide order  
of Court dt.27.1.2020 in HCP (MD)  
No.44 of 2020)

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Habeas Corpus, directing the respondents to produce the person or body of the detenu namely Giri @ Girithar, S/o Athinarayanan, aged about 20 years from the illegal detention of second respondent before this

<https://hccpc.lawclouds.com/hccpcservices/> and set him at liberty.



For Petitioner

:Mr.Veera Kathiravan  
Senior Counsel for M/s G.Mariappan

For Respondents

:Mr.K.Chellapandian  
Additional Advocate General  
assisted by  
Mr.K.Dinesh Babu  
Additional Public Prosecutor

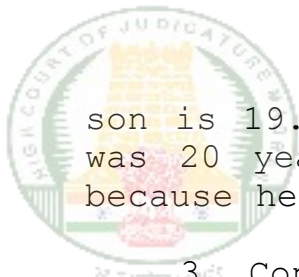
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ORDER

T.RAJA, J.

The father of Giri @ Girithar, aged about 20 years, has approached this Court seeking for issuance of a Writ of Habeas Corpus, directing the Superintendent of Central Prison, Tirunelveli to produce the person or body of Giri @ Girithar, S/o Athinarayanan, aged about 20 years from the illegal detention of the second respondent before this Hon'ble Court and set him at liberty.

2. Mr.Veera Kathiravan, learned Senior Counsel appearing for the petitioner argued that the petitioner's son Giri @ Girithar was remanded by the Inspector of Police, East Police Station, Virudhunagar, the fourth respondent herein in Crime No.357 of 2019 on 12.11.2019 for the offence under Sections 147, 148, 294(b), 323, 506(ii), 302 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998. Thereafter, the petitioner's son was remanded on 21.11.2019 by the learned Judicial Magistrate No.II, Virudhunagar and he was detained in Borstal School, Melur, Madurai District. After two days, he was transferred to the Central Prison, Palayamkottai, Tirunelveli District. With this background of facts, it was further contended that the detenu, after being detained in Central Prison, Palayamkottai on 20.12.2019, as per the remand extension order passed by the learned Judicial Magistrate No.II, Virudhunagar, was not produced either in person or through video conference mechanism before the concerned Magistrate. Hence, it was argued that the petitioner's son has been under detention in the Central Prison, Palayamkottai without any valid detention order and also further argued that the further detention of the detenu without a valid detention order passed by the learned Judicial Magistrate and also the detention of the said offender at the Central Prison would amount to illegal detention, which is impermissible in law. Therefore, the petitioner sent a representation dated 28.12.2019, which was acknowledged by the respondents. However, in spite of the said representation, still the petitioner's son has been kept under detention at the Central Prison, Palayamkottai. Proceeding further, it was stated that the date of birth of the petitioner's



son is 19.10.99 and the age of his son at the time of occurrence was 20 years. But he was falsely implicated in the above case, because he had no bad antecedents.

3. Continuing his arguments, it was further pleaded that the learned Judicial Magistrate No.II, Virudhunagar had passed an order of remand dated 21.11.2019, based on which the detenu was produced for detention at Borstal School, Melur. But he was transmitted to the Central Prison, Palayamkottai within two days. Claiming that the detention cannot be made at the Central Prison, Palayamkottai, learned Senior Counsel appearing for the petitioner submitted that in terms of Rule 575 of the Tamil Nadu Prison Rules, 1983, the adolescent prisoners in the age group of 18 to 25 shall be transferred to the Borstal School, as per the present orders of the Inspector General of Prison. Therefore, the petitioner's son, being an adolescent offender, should have been transferred to the Borstal School and cannot be transferred from Borstal School to Central Prison. In view of the above, the act of detention of the petitioner's son at the Central Prison, Palayamkottai clearly would amount to illegal detention, which requires interference by this Court. When the learned Judicial Magistrate No.II, Virudhunagar has passed the remand order on 21.11.2019, the said remand order was extended by the same Judicial Magistrate till 20.12.2019 and thereafter, no further order extending the remand was passed by the learned Judicial Magistrate No.II, Virudhunagar. In the absence of any order extending the remand, the detention of the petitioner's son at the Central Prison, Palayamkottai amounts to his illegal custody. Therefore, the habeas corpus petition should be allowed and the detenu should be set at liberty.

4. We have heard Mr.K.Chellapandian, learned Additional Advocate General assisted by Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents also.

5. After entertaining the habeas corpus petition on 13.1.2020 and on hearing both sides, this Court had passed two short orders dated 23.1.2020 and 27.1.2020. During the pendency of the matter, as the Commissioner of Police, Tirunelveli City was considered as a necessary party, this Court suo motu impleaded him in its order dated 27.1.2020. As the said orders are necessary for appreciating the concern shown by this Court, they are reproduced below:-

"Order dated 23.1.2020

Learned counsel appearing for the petitioner submitted that when the detenu was an adolescent he was remanded on 19.11.2019 in connection with the case in Crime No.357 of 2019 for the offence punishable under Sections 147, 148, 294(b), 323, 506(i), 302 IPC and Section 4 of TNWH Act. The



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learned counsel further submitted that during the period of remand, the detenu/accused reached the age of 20 years and therefore, he was shifted from Borstal School, Melur to the Central Prison, Palayamkottai on 22.11.2019. It is also submitted by the learned counsel for the petitioner that when the first remand was extended on 05.12.2019, the further extension of such remand ought to have been extended on 20<sup>th</sup> December 2019 by the Court concerned. But, in the present case, there is no such extension. Ironically, the detenu was in remand till 20<sup>th</sup> January 2020 without getting any remand extension order from the Court concerned.

2. Learned Additional Public Prosecutor, replying to the said submission, stated that first extension was made on 05.12.2019, but, after the expiry of 14 days, i.e., on 20.12.2019, since some scrap has occurred in the Video-conferencing room, there was some difficulty in producing the accused. However, noticing the fact that the accused was not produced on receipt of the intimation that the first remand extension expired on 20.12.2019, the learned Judicial Magistrate No.II, Virudhunagar, again directed the respondent Police to produce the detenu/accused as early as possible.

3. Heard both the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor.

4. On perusal of the Proforma Order for the Detention in Judicial Custody, it shows that even on 20<sup>th</sup> December 2019, there is no extension of remand order passed by the learned Judicial Magistrate No.II, Virudhunagar. It also shows that the accused to be produced as early as possible, which means, the accused was not produced before the Judicial Magistrate No.II till 20.01.2020. However, the Docket order dated 20.01.2020 reveals that the accused has been produced and remand has been extended till 03.02.2020. Hence, we do not find any explanation as to why there was no extension for 30 long days from 20.12.2019 till 20<sup>th</sup> January 2020.

5. Therefore, the Superintendent of Prison, Central Prison, Palayamkottai, is directed to give reply along with supporting documents.

6. Post the matter on 27.01.2020."



Order dated 27.01.2020

In the status report filed today, we are not able to find any justification for the lapses committed by the respondent in not obtaining the extension of remand order for a period of 30 days from 20th December 2019 till 20th January 2020, the reason being when the learned Judicial Magistrate No.2, Virudhunagar passed an order on 20.12.2019 to the effect that **"Accused not produced. Intimation received. V.C. not working. Accused to be produced as early as possible"**, specifically mentioning that the accused should be produced as early as possible, the respondent should have swiftly acted within few days and that has not been done so. Consequently, the detenu has also sent a representation to the respondents on 28.12.2019 and the same was received by the respondents on 30.12.2019. Thirdly, when the habeas corpus petition was filed on 08.01.2020, notice was issued on 13.01.2020. Ironically, the detenu was produced before the Court only on 20th January 2020, after a huge delay of 30 days.

2.The reason and justification given before us by the learned Additional Advocate General is that when a letter was addressed to the Commissioner of Police, Tirunelveli by the Superintendent of Central Prison, Palayamkottai, on 05.12.2019, requesting him to provide necessary strong police escort for the production of prisoners to the concerned Courts on 06.12.2019 at 10.00 a.m, there was no response and the Commissioner of Police, Tirunelveli City sent a reply to the effect that "As the Police Officers and Men of Tirunelveli City have been deployed for Law and Order bandobust duty, it is requested that the remand period of the prisoners including that of the present petitioner, who are to be taken from Central Prison, Palayamkottai on 06.12.2019 under strong escort to produce before the concerned Courts on 06.12.2019 and 07.12.2019 may be extended through the bearer of this letter". Again, when the same requisition was made on 07.01.2020 by the Superintendent of Police, Central Prison, Palayamkottai, no positive response was forthcoming. Once again, the Superintendent of Central Prison, Palayamkottai, in his letter dated 19.12.2019, addressing again to the Commissioner of



Tirunelveli city, renewed his request, once again, there was no suitable reply. As a result, the detenu was in illegal custody from 20th December 2019 to 20th January 2020. Hence, it is clear that there is a huge lapse of mandatory conditions imposed by Article 22(2) of Constitution of India, which clearly directs that no person shall be detained in custody beyond the said period, without the authority of a magistrate.

3. Therefore, the Commissioner of Police, Tirunelveli City is suo motu impleaded as a party to this habeas corpus petition to offer his explanation.

4. The Registry is directed to make suitable amendments in the petition and in all relevant places, wherever required and post the mater on 10.02.2020."

6. In our order dated 27.1.2020, we have considered the letter dated 5.12.2019 addressed by the Superintendent of Central Prison, Palayamkottai to the Commissioner of Police, Tirunelveli requesting him to provide necessary strong police escort for the production of prisoners to the concerned Courts on 6.12.2019 at 10.00 A.M., and his failure to respond to the said request. On the other hand, he sent a reply to the effect that as the Police Officers and Men of Tirunelveli City have been deployed for Law and Order bandobust duty, he requested that the remand period of the prisoners including that of the petitioner's son may be extended through the bearer of the letter. It is not known under which provision of law the Commissioner of Police, Tirunelveli city gave such a reply which, according to us, is unacceptable. However, when the Superintendent of Central Prison, Palayamkottai again renewed his request on 7.1.2020, once again we find that no response was forthcoming from the Commissioner of Police, Tirunelveli city. Therefore, the Superintendent of Central Prison, Palayamkottai, addressing another letter dated 19.12.2019 to the Commissioner of Police, Tirunelveli city, had to renew his request. Ironically, again there was no suitable reply, with the result the detenu was in illegal custody from 20.12.2019 to 20.1.2020. Therefore, in the order dated 27.1.2020, we have come to the conclusion that there was a huge lapse of mandatory conditions imposed by Article 22(2) of the Constitution of India, which states as follows:-

"(1) .....

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours

of such arrest excluding the time necessary for



the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply-

(a) to any person who for the time being is an enemy alien; or

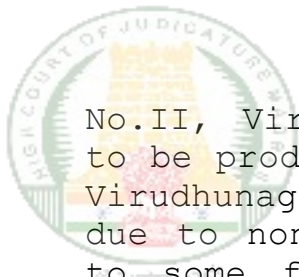
(b) to any person who is arrested or detained under any law providing for preventive detention.

(4)....."

7. We have also gone through the report filed by the Commissioner of Police, Tirunelveli City dated 10.2.2020. Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents also, restating the reasons given in paragraph-5 thereof, argued that for the reasons mentioned therein, it became difficult for the fifth respondent to provide strong escort to produce the listed prisoners before the concerned Court, in spite of the legal necessity cast upon the fifth respondent to provide escort to the petitioner's son for the purpose of remand extension before the Judicial Magistrate No.II, Virudhunagar. However, he pleaded that the fifth respondent did not have knowledge about the extension of remand of the petitioner's son.

8. In our considered opinion, such a contra stand taken by the fifth respondent shows his utter callousness and sheer failure of his duty to aid the Court of law, for the simple reason that when he had acknowledged the communication dated 4.12.2019 received from the second respondent requesting him to provide necessary police escort for production of the petitioner's son before the concerned Court on 5.12.2019, the fifth respondent is not justified in taking a contra stand that he did not have the knowledge about the non-extension of remand of the petitioner's son. Such an inconsistent and double stand exemplify the gross lapses committed in keeping the petitioner's son in illegal custody without any order as to the extension of remand obtained from the learned Judicial Magistrate No.II, Virudhunagar, which could be considered as a wanton and wilful act of negligence from discharging his official duties.

9. The counter affidavit filed by the second respondent also shows that the petitioner's son is alleged to have been involved in high profile political murder case and the respondents are duty bound to provide utmost security to safeguard him from the political foes. After considering all these aspects, when the petitioner's son was transferred from the Borstal School, Melur to the Central Prison, Palayamkottai, the learned Judicial Magistrate



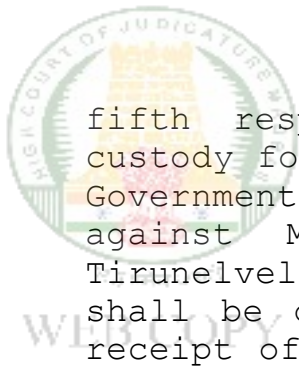
No.II, Virudhunagar remanded the petitioner's son on 21.11.2019, to be produced again before the learned Judicial Magistrate No.II, Virudhunagar at 10.00 A.M., on 5.12.2019. But he was not produced due to non-availability of strong escort on 5.12.2019. Again due to some fault in the video conference system in the Court of Judicial Magistrate No.II, Virudhunagar, the petitioner's son was finally produced before the learned Magistrate on 9.12.2019 and his remand was extended till 20.12.2019.

10. When all earnest efforts were taken to produce the petitioner's son before the learned Judicial Magistrate No.II, Virudhunagar through video conference, due to non-working of video conference system in the Virudhunagar Court, the remand prisoner could not be produced. Therefore, a legal duty was cast on the respondents 2 & 5 to coordinate with each other so as to produce the petitioner's son before the learned Judicial Magistrate No.II, Virudhunagar for the remand extension.

11. In view of the pendency of this matter, a request was placed that the fifth respondent has provided strong escort on 20.1.2020 and the petitioner's son was produced before the learned Judicial Magistrate No.II, Virudhunagar and his remand was also extended till 3.2.2020. Here again, we wish to indicate as to how the fifth respondent can remain so casual, inasmuch as when the habeas corpus petition was filed before this Court on 8.1.2020 and the notice was issued on 13.1.2020, regrettably, the petitioner's son was produced before the Court on 20.1.2020 after a lapse of 30 days. This clearly shows that the fifth respondent has not only shown his heedlessness and recklessness, but remained insolent to the repeated requests made by the second respondent and thereby failed to aid the learned Judicial Magistrate No.II, Virudhunagar for passing the order extending the remand of the petitioner's son, giving rise to his illegal detention that in turn gives rise to a cause for interference with the same by the High Court. Therefore we are of the view that the 5<sup>th</sup> respondent has failed from his integrity and devotion to duty.

12. Since the matter was pending before this Court, due to the delay caused by the fifth respondent, the time for moving statutory bail under Section 167(2) Cr.P.C., has come to the rescue of the detenu. Therefore, by order dated 27.2.2020, we permitted the petitioner to invoke the statutory right giving liberty to the competent Court to pass orders in accordance with law, as a result the detenu also got the benefit of statutory bail under Section 167(2) Cr.P.C. This is only because of the non responsive attitude of the fifth respondent.

13. In view of the subsequent development that the detenu has been enlarged on statutory bail, for the lapses committed by the



fifth respondent in keeping the petitioner's son in illegal custody for a period of 30 days, we hereby direct the Secretary to Government, Home Department, Chennai to take suitable action against Mr.Deepak M.Damor, I.P.S., Commissioner of Police, Tirunelveli City, after putting him on notice. Such an exercise shall be done within a period of three months from the date of receipt of a copy of this order. With this direction, the habeas corpus petition stands disposed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SS

To

1. The Inspector General of Prison  
Chennai Metropolitan Development  
Authority Tower-II  
No.1, Gandhi Irwin Road  
Egmore, Chennai 600 008
2. The Superintendent of Central Prison,  
Trivandrum Road,  
Vasantha Nagar, Palayamkottai,  
Tirunelveli District 627 007.
3. The Superintendent,  
Borstal School,  
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Trichy Road, Melur,  
Madurai District 625 106.
4. The Inspector of Police,  
East Police Station,  
Virudhunagar 626 001.
5. The Commissioner of Police,  
Tirunelveli City.
6. The Additional Public Prosecutor  
Madurai Bench of Madras High Court  
Madurai



**copy to:**

The Secretary to Government,  
Home Department, Fort St.George,  
Chennai- 600 009.  
( for taking necessary action)

Order in  
H.C.P. (MD) No.44 of 2020  
09.11.2020

SV2 (CO)  
KM (01.12.2020) 10P 8C