

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice R.PONGIAPPAN

H.C.P.No.575 of 2021

M.Dharani
W/o.Munusamy

.. Petitioner

Vs.

1.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

2.The Executive Magistrate-cum-
Deputy Commissioner of Police,
Washermenpet Division, Chennai.

3.The Inspector of Police,
H-8, Thiruvotriyur Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to direct the respondent to produce the petitioner's son Karthick @ Gate Karthick, son of Munusamy, aged about 24 years, who is detained illegally by the first respondent, before this Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban

For Respondents: Mr.R.Prathap Kumar

Additional Public Prosecutor

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

This habeas corpus petition has been filed seeking to direct the respondents to produce the petitioner's son Karthick @ Gate Karthick, son of Munusamy, aged about 24 years, who is detained illegally by the first respondent, before this Court and set him at liberty.

2. It is seen that the detenu viz., Karthick @ Gate Karthick, son of Munusamy, aged about 24 years, faced proceedings under Section 110 Cr.P.C, in which, the Executive Magistrate-cum-Deputy Commissioner of Police, by order dated 11.01.2021 in Rc.No.26/Sec.Pro/DCP WPT/2020, has directed him to be placed in custody for a period of 365 days from 06.01.2021. The detenu challenged the said order in Crl.R.C.No.75 of 2021, in which, a learned Single Judge of this Court, by order dated 12.02.2021, has remanded the matter to the Executive Magistrate-cum-Deputy Commissioner of Police for fresh consideration on the ground that the detenu was not given legal assistance. While that being so, the detenu gave a representation dated 19.03.2021 to the first respondent contending that his detention is illegal in the light of the order dated 12.02.2021 that was passed by the learned Single Judge of this Court in Crl.R.C.No.75 of 2021. In response to the said representation, the Superintendent of Prisons, Central Prison, Puzhal, Chennai, first respondent herein, has sent a communication dated 24.03.2021 stating that the learned Single Judge has only remanded the case to the Executive Magistrate-cum-Deputy Commissioner of Police and that he would release the detenu after receiving orders from the Executive Magistrate.

3. Challenging the said communication, this habeas corpus petition has been filed.

4. Heard Mr.V.Paarthiban, learned counsel for the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondents/State.

5. The learned counsel for the petitioner submitted that the order of the learned Single Judge of this Court has been misconstrued by the first respondent, in that, he had failed to note that the order of the Executive Magistrate has been set aside and therefore, further detention of the detenu without a valid order of remand is illegal.

6. We are unable to countenance the aforesaid submission. It is true that a prisoner can be lodged in a prison based either on an order of the Court or on the detention order passed by an Executive Authority. In this case, the Executive Magistrate-cum-Deputy Commissioner of Police, has, by order dated 11.01.2021, had directed the detenu to be lodged in the prison for a period of 365 days from 06.01.2021. The prison authorities cannot be expected to give interpretation to the order of the learned Single Judge of this Court dated 12.02.2021 in Crl.R.C.No.75 of 2021, in a way beneficial to the detenu, inasmuch as, they were not parties to the said case nor a copy of the order was marked to them. The first respondent, in his communication dated 24.03.2021, has clearly stated that after

receiving the orders of the Executive Magistrate, it will be executed accordingly. Thus, unless the prison authorities receive a valid order of release either from the superior Court or from the Court which remanded the prisoner in custody, they cannot release the prisoner by interpreting the order of this Court as desired by the prisoner.

Hence, this habeas corpus petition is closed with liberty to the detenu viz., Karthick @ Gate Karthick, son of Munusamy, either to approach the learned Single Judge of this Court or the Executive Magistrate-cum-Deputy Commissioner of Police, for appropriate orders of release from custody.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nsd
To

1.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

2.The Executive Magistrate-cum-
Deputy Commissioner of Police,
Washermenpet Division, Chennai.

3.The Inspector of Police,
H-8, Thiruvotriyur Police Station,
Chennai.

4.The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

+lcc to Mr.S.Ponnivalavan, Advocate SR.No. 23567

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GMI CO
A.SK(05.07.2021)

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