

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2021

PRONOUNCED ON : 18.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

H.C.P.No.2105 of 2019

Afina Banu

... Petitioner  
(Wife of the detenu)

Vs

1.The State of Tamil Nadu  
Rep.by the Secretary to the Government,  
Department of Home  
Fort St.George  
Chennai - 600 009.

2.The Superintendent of Central Prison  
Puzhal - I  
Chennai - 600 066.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India preferring for issuance of Writ of Habeas Corpus, to direct the respondents to release the detenu, Bilal Malik, S/o Syed from solitary confinement, in Central Prison, Puzhal, by allowing the detenu to mingle with other undertrial prisoners.

For Petitioner : Mr.R.Sankarasubbu

For Respondents: Mr. R. Prathap Kumar,  
Additional Public Prosecutor.

ORDER

(V.SIVAGNANAM.J.,)

This Writ Petition has been filed to direct the respondents to release the detenu, Bilal Malik, S/o Syed from solitary confinement, in Central Prison, Puzhal, by allowing the detenu to mingle with other undertrial prisoners

2.The learned counsel for the petitioner would submit that the detenu-Bilal Malik, is the husband of the petitioner, who is

an undertrial prisoner, undergoing incarceration since 06.10.2013 in connection with Crime No.1591 of 2015 on the file of the Vellore Town Police Station, and presently, confined in the Central Prison, Puzhal-I, Chennai; further, the detenu was subjected to solitary confinement in high security block called condemned block, where prisoners, who are facing death sentence alone are housed; the solitary confinement of the detenu is in violation of the principles set out by the Supreme Court in *Sunil Batra Vs. Delhi Admn & others* [(1978) 4 SCC 494] and *Sunil Batra - II Vs. Delhi Admn* [(1980) 3 SCC 488], and he pleaded to release the detenu from solitary confinement forthwith.

3.The learned Additional Public Prosecutor appearing for the respondents would submit that the detenu is involved in so many criminal cases and he has been detained in a sensitive block; another accused, viz., Mohamed Ismail, is also detained in the same block; the detenu being a remand prisoner, was separately detained from the convict prisoners; the Central Prison, Puzhal, Chennai, is specially meant for convicted prisoners; further, the detenu prevented the 2nd respondent from performing their duty and tried to attack them and violated the Prison Rules; the detenu behaved unruly in the prison and a detailed counter along with details of offences committed by the detenu in the prison was filed and he sought dismissal of this petition.

4.On the prayer of the learned counsel for the petitioner, this Court, by order dated 12.12.2019, directed the Principal District Judge, Tiruvallur, to inspect the Central Prison, Puzhal-I, Chennai, to find out as to whether the petitioner's husband viz., Bilal Malik, S/o Syed, is subjected to have illegal torture, attack and solitary confinement in the prison.

5.Mr.J.Selvanadhan, learned Principal District Judge, Tiruvallur, inspected the Central Prison, Puzhal-I, Chennai on 08.01.2020 and submitted a detailed report.

6.Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondents and also perused the materials on record.

7.On a perusal of records, it is seen that the petitioner's husband-Bilal Malik is a remand prisoner in connection with Crime No.1591 of 2015 on the file of Vellore Town Police Station, and presently confined in Central Prison, Puzhal-I, Chennai. Further, the detenu has been remanded in a sensitive block. In the sensitive block, there are 12 cells. The detenu has been kept in Cell No.12 and another prisoner, viz., Mohamed Ismail, has been kept in Cell No.11. The Report submitted by the Principal District Judge, Tiruvallur, clearly narrates about the confinement of the detenu and the report is as follows:-

"As directed by the Hon'ble High Court, I verified the provisions available to the petitioners. I submit that in the said sensitive block, there are 12 Cells named as 1 to 12. The petitioner's husband namely Bilal Malik S/o Syed was kept in Cell No.12. There is another prisoner namely, Mohammed Ismail S/o Mohammed Abdullah, who is kept in Cell No.11. No prisoner have been kept in Cell No.1 to 10. On inspection of the Cell No.12 where the petitioner's husband is housed, there is water facility, electricity facility with one Tube light and one fan. Water is available electricity is available and the fans and light are all functioning. The detenu namely Bilal Malik has stated that the above said provisions are available from the date of keeping him in the said Cell. In the said Cell, the main gate is with Iron gate and there are 2 iron windows without any glasses. One in the front side and another at the back side of the said Cell. The said two iron windows were kept closed by the detenu with clothes, through the said window from the entrance there is no visibility inside the cell. The main entrance gate as well as in the windows were covered with mosquito mesh.

With regard to the food is concerned there is no complaint from the detenu namely Bilal Malik. I directed the prison authorities to go away and personally enquired with the said prisoner Thiru Bilal Malik, S/o Syed, who has stated that he has been kept in the said Cell from 10.12.2015 onwards. He has stated that intially he was kept in the mental health ward for some time and thereafter kept in the Cell No.12 and till date he is in the said Cell No.12. I verified with him with regard to any external or internal injuries. There is no external injury on physical verification. The detenu has stated that there is no internal injury also."

8.We have considered the submissions of the learned Additional Public Prosecutor and perused the offences committed by the detenu, inside the Prison and the details of offences committed by the detenu are given below:-

| S.No | Date       | Brief of the incident                                                                                                                                                                                                                                         | Action taken                                                                                                                                                                     |
|------|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.   | 13.12.2013 | Scolded the Block in-charge Assistant Jailor in a derogatory manner and threatened him.                                                                                                                                                                       | Prison privileges suspended for 3 months.                                                                                                                                        |
| 2.   | 28.04.2014 | Scolded the prison warders using unparliamentary words, prevented them from performing their official duty and damaged the government property (tube light)                                                                                                   | Prison privileges suspended for 3 months and case filed in Pahayam Police Station.                                                                                               |
| 3.   | 09.09.2015 | Refused to go to lock-up, demanding to be provided with more milk than the prescribed amount, and threatened the Jailor Mr.Rajasekar saying that "we belong to Ul-Umma Movement. If you dont give us what we ask for then be ready to face the consequences." | Severe warning issued.                                                                                                                                                           |
| 4.   | 15.09.2015 | Refused to go to the trial Court, Puttur, by saying that they dont have any faith on the Courts.                                                                                                                                                              | Warning and proper counselling was provided, and they were sent to Court.                                                                                                        |
| 5.   | 25.09.2015 | Created ruckus in prison by ganging up with other prisoners and conducted murderous attack on the prison officials, and held the prison officers as captive (as narrated above in para 6 of this affidavit.                                                   | Cases registered in Puzhal Police Station, and the detenu was transferred to Central Prison - 1 (Convict), Puzhal on 26.09.2019 under the orders of the DIG of Prisons, Chennai. |

| S.No | Date       | Brief of the incident                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Action taken                                                 |
|------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| 6.   | 08.05.2017 | At 3.00 PM, while the detenu was searched before being sent to be produced before the trial Court, the Handheld Metal Detector made beeping noise, upon which the warder, main gate-Mr.Sivanaikaatha Perumal tried to search the detenu. The detenu raised objection for the same and prevented the prison warder from performing his duty, and entered into an argument with the main gate warder and created ruckus at the main gate.                                                                                                                                                                      | Case registered in Puzhal Police Station.                    |
| 7    | 10.07.2018 | At 5.15 PM, while the Jailor (I/c) Mr.Kothandaraman, along with Mr.Ramadurai, SSI (Vigilance dept) and Mr.Thangaraj, SI (Vigilance dept) were conducting searches in Quarantine Block, the detenu along with the co-accused RP No.1669 Panna Ismail S/o Mohammed Ismail and RP No.1668 Bakrudeen @ Police Bakrudeen, unlawfully left their sensitive block premises, and assembled in front of the Quarantine Block and verbally abused the above mentioned prison officials, using filthy language, and questioned as to "under what orders / rules are the vigilance people entering into prison premise." | Case registered against the detenu in Puzhal Police Station. |

| S.No | Date       | Brief of the incident                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Action taken                                                                                                              |
|------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| 8.   | 09.01.2019 | At 10.30 in the morning, when Prison Warder Mr.Meganathan from the "Quick Reaction Team" conducted surprise check up in the block premises where the detenu is lodged, the detenu scolded the warder for doing so, and told him to ask the Superintendent of Prisons (the 2nd respondent herein) to come for a lvs1 fight with him.                                                                                                                                                                                                                                    | Case registered against the detenu in Puzhal Police Station.                                                              |
| 9.   | 23.03.2019 | At 11.00, while the 2nd respondent herein was conducting daily rounds inside prison, the 2nd respondent caught the detenu in 'High Security Block' which is a convicted prisoner's block. When the 2nd respondent herein questioned the detenu in this regard, the detenu had abused the 2nd respondent using unparliamentary words and threatened with dire consequences and told that the detenu will file a false case against the 2nd respondent that the 2nd respondent is acting against the beliefs of Islam and thereby create trouble for the 2nd respondent. | As the detenu had expressed regret for his wrong actions, he was warned and advised for proper psychological counselling. |

| S.No | Date       | Brief of the incident                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Action taken                           |
|------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| 10.  | 17.04.2019 | At 9.30 AM when Assistant Jailor Mr.Syed had took the cleaning gang to clean the Sensitive Block premises to prepare for the weekly block inspection by the 2nd respondent, the detenu had obstructed them from carrying out the cleaning work, and scolded him in a loud voice in an intimidating way saying "Nobody dares to enter this premise without our permission. If you do so, what happened to Mr.Ilavarasan, the Jailor of Central Prison-2, will only happen to you. If something happens to you, none of your department people will come to help you. Once this Superintendent gets transferred, you will not be able to enter into this prison. I will destroy your life". | Referred for Psychological Counselling |
| 11.  | 18.10.2019 | At 11.00 AM, when the 2nd respondent herein was on routine rounds inside the prison, the detenu had indulged into an argument with the 2nd respondent and threatened him stating that "Your authority is only within this four walls. I will see you outside"                                                                                                                                                                                                                                                                                                                                                                                                                             | The detenu was given a warning.        |

| S.No | Date       | Brief of the incident                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Action taken                                                 |
|------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| 12.  | 02.08.2019 | When the 2nd respondent herein, along with the Jailor, had visited the Sensitive Block, he found that the detenu had used his clothes and bedsheet as screen to block the view from outside through the cell door and window. When the 2nd respondent explained to the detenu that it is against prison rules and tried to remove the screens, the detenu along with his co-accused RP No.1669 Panna Ismail S/o Mohammed Abdulla had picked up an argument with the 2nd respondent and threatened in a menacing tone that they will raise false accusation against the 2nd respondent and prison administration before their Trial Court. | Prison privileges suspended for 1 month for the detenu.      |
| 13.  | 13.08.2019 | While the 2nd respondent was conducting weekly inspection file, the detenu along with his co accused RP No.1669 Panna Ismail S/o Mohammed Abdullah did not stand in the file for inspection. Later they complained that since they were not permitted to get extra materials for Bakrid, they did not want to stand in the file                                                                                                                                                                                                                                                                                                           | Prison privileges were suspended for 1 month for the detenu. |

| S.No | Date       | Brief of the incident                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Action taken                                                  |
|------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| 14.  | 27.08.2019 | While the 2nd respondent was conducting weekly inspection file, the detenu along with his co accused RP No.1669 Panna Ismail S/o Mohammed Abdullah did not stand in the file for inspection. When the 2nd respondent and the Jailor tried to explain them that is against prison rules to refuse to subject them for weekly file, the detenu and verbally abused the 2nd respondent in a loud menacing voice using in a disrespectful way by addressing the 2nd respondent singularly, and prevented him from performing his official duty and tried to attack the 2nd respondent. | Case registered against the detenu in Puzhal Police Station.  |
| 15.  | 27.08.2019 | When the prison warders tried conduct search in the detenu's cell, the detenu obstructed the prison warders, and thereby prevented them from performing their official duty, and scolded them and intimidated them in a threatening way by telling them "Ask what happened in Central Prison-2 in 2015, only then you will know about us".                                                                                                                                                                                                                                         | Prison privileges were suspended for 3 months for the detenu. |

सत्यमेव जयते

9. On consideration of the report submitted by the Principal District Judge, Tiruvallur, and the offences committed by the detenu as detailed above, we find that it is an extreme case of compelling necessity for the security of other prisoners. Further, we do not find that there was any illegal torture or attack on the detenu. In the absence of infliction of physical torture on the detenu, we find that there is no violation of principles laid down by the Supreme Court, in Sunil Batra - I and II (supra). Further, it is necessary and sufficient for separate confinement of the detenu from other prisoners, for the reason that he is involved in so many offences in the prison itself as stated supra.

10. Therefore, this Habeas Corpus Petition stands dismissed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jer

To

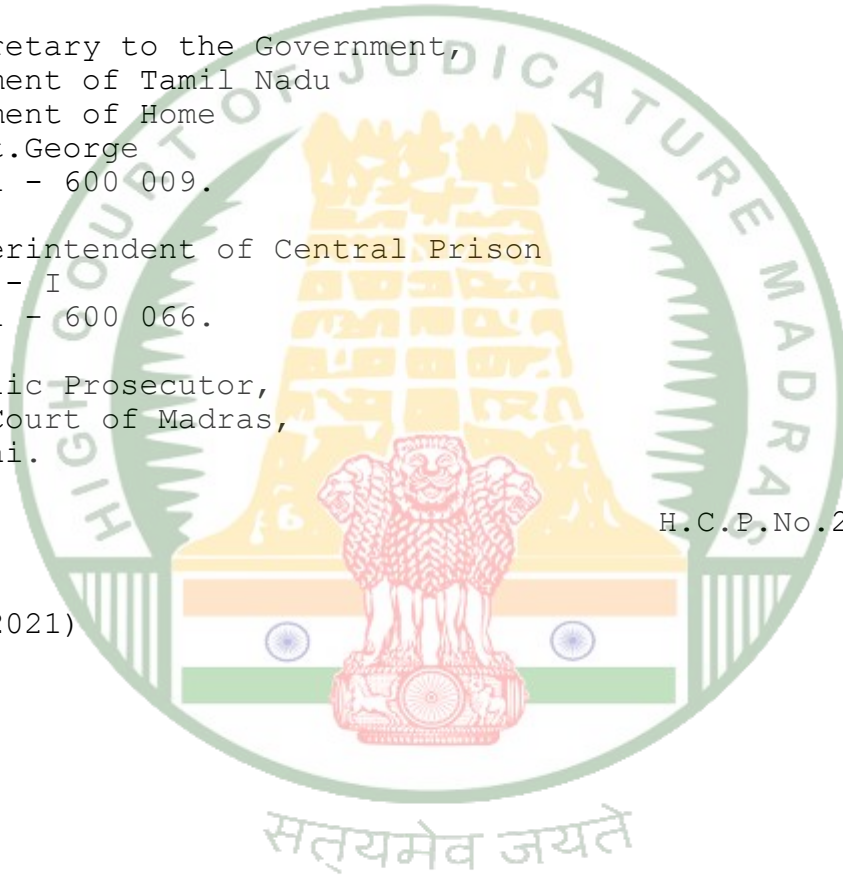
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3. The Public Prosecutor,  
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