



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 29.07.2021

DATE ON WHICH PRONOUNCED: 08.10.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

W.P. (MD)No.9898 of 2021

in

W.M.P. (MD)No.7599 of 2021

M.Parvathy Pillai

... Petitioner

Vs.

1. The Union of India, represented by,
The Principal Secretary,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi-110 001.
- 2.The Union of India, represented by,
The Principal Secretary,
Ministry of External affairs,
Government of India,
South Block, Raisina Hill,
New Delhi-110 001.
- 3.The State of Tamilnadu, represented,
The Principal Secretary,
Department of Home,
State Secretariat, Fort St.George,
Chennai-600 009.
- 4.The State of Tamilnadu, represented by,
The Principal Secretary,
Department of Public,
State Secretariat, Fort St.George,
Chennai-600 009.
- 5.The Branch Secretary,
Ministry of External Affairs,
Chennai Branch, No.68, College Road,
E.V.K. Sampath Maaligai,
7th Floor, Nungampakkam,
Chennai-600 006.



6.The Commissioner,
Commissioner of Rehabilitation and Welfare of Non Resident Tamils,
4th Floor, Ezhilagam Annex Building,
Chepauk, Chennai-600 005.

7.The District Collector-cum-Camp Officer,
Special Camp for foreigners,
Central Prison Campus,
Tiruchirapalli.

8.The District Collector,
Officer of the District Collector,
Ramanathapuram.

9.The Inspector of Police,
Q-Branch CID,
Ramanathapuram District.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of a **Writ of Certiorarified Mandamus**, to direct the respondents to call for the records in connection with the order passed in G.P.(ID)No.291 dated 03.07.2019 of Public (Fors.I) Department against the detenu Mr.Niruban @ Lanjan S/o.Maheswaran confined at Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli and quash the same and permit him to stay along with the petitioner till the completion of case in Crime No.1 of 2019 pending on the file of the 9th respondent police.

For Petitioner	: Mr.R.Alagumani
For R1, 2 & 5	: Mr.S.Jeyasingh Special Government Pleader
For R3, 4 & 6 to 9	: Mr.R.M.Anbunithi, Additional Public Prosecutor.

ORDER

This Writ Petition is filed seeking a direction to direct the respondents to call for the records in connection with the order passed in G.P.(ID)No.291 dated 03.07.2019 of Public (Fors.I) Department against the detenu Mr.Niruban @ Lanjan S/o.Maheswaran confined at Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli and to quash the same and permit him to stay along with the petitioner till the completion of case in Crime No.1 of 2019 pending on the file of the 9th respondent police.

2. (i) The petitioner is the mother of one Mr.Niruban @ Lanjan, who has been confined at Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli. The petitioner along with her family members arrived India on 10.02.2007 from Srilanka and they are residing in the Mandapam Camp, Ramanathapuram District, along with the above said Mr.Niruban @ Lanjan, who is unmarried. He



completed his School education in Government Higher Secondary, Mandapam Camp on 12.05.2019. The ninth respondent has registered a case against the above said Mr.Niruban @ Lanjan for the offences punishable under Sections 120B, 420, 465, 468, 471 IPC and Sections 3, 12 (1A) (a) & 12 (2) of the Passport Act, 1967. By order, dated 03.07.2019, the fourth respondent has passed a restriction order upon the above said Mr.Niruban @ Lanjan and detained him within the premises of the Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli District. After passing the said above said order, Mr.Niruban @ Lanjan, has filed a petition in Crl.OP.No.9886 of 2019 for bail and that was also granted by imposing certain conditions on 17.07.2019. Even though, bail was granted, Niruban @ Lanjan was directed to take up from Ramanathapuram District Jail to Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli.

(ii) The petitioner is aged 69 years old. None available to maintain her in the old age and also suffering a lot without the help and care of the above said Niruban @ Lanjan. He has been confined in the above said Jail for the past 2 years, even though bail has been granted.

(iii) For the purpose of shifting Niruban @ Lanjan from Mandapam Camp, Ramanathapuram District, along with her, she made a representation dated 21.08.2019 and she was directed to approach the seventh respondent for the relief. On 02.03.2021, again she sent a representation. But, there was no action. Hence, this petition.

3. Heard both sides.

4. Counter has also been filed by the 4th respondent herein.

5.The case involves, unfortunate pathetic condition of a mother, who is a Srilangan Refugee, who now stays in Mandapam Camp, Ramanathapuram District, and the son namely, Mr.Niruban @ Lanjan was directed to stay in Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli, for restricting his movement by the above said order. The above said Niruban @ Lanjan appears to be only son of the petitioner and her husband. They came to India in the year 2007. Ever since, they were living the Mandapam Camp, Ramanathapuram. In the year 2009 Mr.Niruban @ Lanjan has been implicated in the above said crime. Even though, he was granted bail, it appears that he was directly taken to the Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli. Ever since, he stays there.

6. The question of detention or confinement does not arise here. So, the contention on the part of the petitioner that the detention order has been passed without any valid reason is not acceptable. So, what has been ordered is the restriction of movement of the said Niruban @ Lanjan, because of his involvement in the above said criminal case.



7. The question which arises for consideration is **whether the pendency of the investigation in the above said criminal case, the mother must be deprived of the company, care and support of her only son?**

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8. In my considered view, the request made by the petitioner is more on humanitarian ground and than on legal.

9. We will straightly go through the order passed by the Government of Tamil Nadu, in G.O(ID).No.291, dated 03.07.2019, which has been passed in exercise of the powers conferred under Section 3 (2) (e) of the Foreigners Act, 1946 (Central Act XXXI of 1946) r/w notification of the Government of India, Ministry of Home Affairs, No.4/3/56 (i) F1, dated the 19th April, 1958, for restricting the movement of Sri Lankan Tamil Niruban @ Lanjan, S/o.Maheswaran, the Governor of Tamil Nadu hereby orders that he shall reside in the Special Camp indentified and located by the District Collector, Tiruchirappalli, in the event of his release from prison. The said foreigner shall not leave the boundaries of Special Camp at Tiruchirappalli, except with the prior permission of the District Collector.

10. In view of the above, this Court is of the opinion that this only a restriction order and it cannot be termed either as a detention order or a confinement order. What has been restricted is only his movements. But, there is no total restriction. He can come out of the Special Camp with proper permission of the Trichy Collector. Powers of the Government to pass such a restriction by exercising the powers under Section 3(2)(e) of the Foreigners Act, 1946, came up for consideration in a number of judgments. One person namely, Babitha moved this Court, in W.P(MD)No.18037 of 2020, seeking a similar prayer. An elaborate discussion has been made by this Court. Paragraph 10 of the above said order runs like this:-

"10.Now, coming back to the points raised by the petitioner, the scope of the Section 3(2)(e) and 3 (2)(g) of the Foreigners Act, came up for consideration before the Full Bench of this Court in **Sree Latha Vs. Secretary to Government, Public (SC) Department, Government of Tamil Nadu and others** reported in (2007) 2 MLJ (CRL.) 1320, wherein, the Hon'ble Full Bench considered the following decisions. In **Kalavathy Vs. State of Tamil Nadu** reported in (1995) 2 LW (CRL.) 690 (2), it has been held that the order regarding confinement in the Special Camp would not amount to an order of preventive detention, whereas, in the decision in **Yogeswari Vs, State of Tamil Nadu** reported in (2003) 1 LW (CRL.) 352, it has been held that such an order will only amount to confinement. The Hon'ble Full Bench, as a result held



that an order directing a person to stay in a Special Camp with restriction cannot be construed as a detention or confinement as envisaged under Section 3 (2)(g) of the Foreigners Act. In CrI.A.No.651 of 2012, dated 26.11.2013, it is also held that opportunity of hearing can be given only in the event of expulsion and therefore, the grievance of the petitioner that her husband was not given any opportunity before passing the order is not also available to the petitioner. IT has also been held that the authorities have ample powers to impose orders restricting movements."

11. So, this discussion will answer the question, which has been raised by the petitioner, in this petition. In the concluding paragraph No.13, this Court has observed like this.

"During the course of arguments, the learned counsel for the petitioner would make a request that the petitioner's husband may be permitted to reside within Thoppaiyar Dam Refugees Camp, Dharmapuri Taluk, Dharmapuri District, where his family is also residing. No doubt, this is a request on humanitarian ground. Article 21 of the Constitution of India applies to non citizens also. Life includes right to have a family, children and their company. Such a right is available to the husband of the petitioner also. Similarly, this petitioner has right to have her husband's company and their children have right to have their father's company unless and until imprisonment is imposed upon the husband of the petitioner. However, such a direction cannot be given in this petition. If at all, the petitioner and her husband may make proper representation to the concerned Authorities, setting out necessary facts and circumstances, the concerned Authorities may be directed to take necessary action on the representation to be submitted by them."

12. While disposing the above said matter, this Court has granted liberty to the petitioner and her husband to make proper representation for consideration. So, the discussion as well as the conclusion that has been reached in the above said matter will squarely apply to the facts and circumstances of this case also.

13. The petitioner's son involved in Crime No.102 of. As detailed in the petition and counter, no doubt, he has been released on bail. But, noting that he may again try to fly away from the country with the forged document, such a restriction order has been passed. So, that cannot be found fault with and earlier that cannot



be also changed. That is why I have stated in the opening para of the discussion that plea that has been raised in more on humanitarian than on legal.

14. Perusal of the records and affidavit shows that the petitioner's mother is very old aged and suffering from many health issues. She is not having husband or any other child to take care of her. She is lonely fighting with the health issues. So, the company of her son is very much required as stated in WP(MD)N.18037 of 2020. The petitioner requires the care and support of her son. So, I am of the considered view that this is the fittest case that can be considered on humanitarian ground by the first respondent.

15. So, this petition can be disposed of by issuing the following directions:-

(i) The petitioner and her son are at liberty to make proper representation to the first respondent herein setting out the facts and circumstances, necessity as well as other factors for shifting of the petitioner's son from Trichy Refugee Camp to Mandapam Camp, Ramanathapuram within a period of one month from the date of receipt of a copy of this order.

(ii) On receipt of such representation, the first respondent herein, is directed to consider the same on humanitarian ground and pass orders taking into account the family circumstances of the petitioner, within a month thereafter.

16. With the above said liberty and directions, this Writ Petition stands disposed of . No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

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/ /2021

Sub Assistant Registrar(CS)

dss
To

1. The Principal Secretary,
Government of India,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi-110 001.



2.The Principal Secretary,
Government of India,
Ministry of External affairs,
Government of India,
South Block, Raisina Hill, New Delhi-110 001.

3.The Principal Secretary,
State of TamilNadu,
Department of Home,
State Secretariat, Fort St.George, Chennai-600 009.

4.The Principal Secretary,
State of TamilNadu,
Department of Public,
State Secretariat, Fort St.George,
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9.The Inspector of Police,
Q-Branch CID, Ramanathapuram District.

10.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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TSK (CO)
TR/SKN(25.11.2021) 7P 11C

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