



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.3884 of 2022

1.Kalailingam @ Kalai

2.Kaviarasan @ Raja

3.John Martin @ John @ Ilanthannal

...Petitioners

Vs.

State by: The Superintendent of Police,
Central Prison,
Chennai-4.

...Respondent

PRAYER : Criminal Original Petition is filed under Section 482 r/w 427 and 428 Cr.P.C., pleaded to issue a direction to the respondent to consider the legal representation of the petitioners dated 07.02.2022 and directing the respondent to implement the judgment in Spl.S.C.No.5 of 2014 (on the file of the Special Court, NIA Cases at Puducherry) dated 04.02.2022 and run concurrent the petitioners sentence in Spl.S.C.No.5 of 2014 (on the file of the Special Court, NIA Cases at Puducherry) with the petitioners sentence in S.C.No.7 of 2007 (on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Ponnamalee, Chennai) and set off the petitioners detention period.

For Petitioners : Mr.M.Radhakrishnan
for Mr.P.Pugalenthi

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor.

O R D E R

This Criminal Original Petition has been filed to direct the respondent to consider the legal representation of the petitioners dated 07.02.2022 and directing the respondent to implement the judgment in Spl.S.C.No.5 of 2014 (on the file of the Special Court, NIA Cases at Puducherry) dated 04.02.2022 and run concurrent the petitioners sentence in Spl.S.C.No.5 of 2014 (on the file of the Special Court, NIA Cases at Puducherry) with



the petitioners sentence in S.C.No.7 of 2007 (on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Ponnamalee, Chennai) and set off the petitioners detention period.

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2. The submissions of the learned counsel appearing for the petitioners are as follows:-

(a) The petitioners are arrayed as A2, A3 and A5 in S.C.No.7 of 2007 on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Ponnamalee, Chennai and they are also arrayed as A3, A4 and A6 in Spl.S.C.No.5 of 2014 on the file of the Special Court for NIA Cases at Puducherry.

(b) The petitioners 1 and 2 were arrested on 11.03.2014 relating to a Crime No.47 of 2014 on the file of the Othakkadai Police Station and remanded to judicial custody and detained in Central Prison, Madurai from 11.03.2014. The third petitioner surrendered before the Court on 27.03.2014 and remanded to judicial custody. While all the petitioners were in prison and they were formally arrested and remanded in Crime No.10 of 2014 (on the file of the Nachiyarpuram Police Station, Sivagangai District), before the Judicial Magistrate, Thirupathur on 25.03.2014. Later, on 09.04.2014, the petitioners were produced before the Special Court for NIA Cases, Puducherry and they were remanded to judicial custody in the case in Spl.S.C.No.5 of 2014. It is pertinent to note that the first and second petitioners are in judicial custody from 11.03.2014 and the third petitioner is in judicial custody from 27.03.2014 for more than 7 years and 10 months.

(c) The case in Crime No.10 of 2014 on the file of the Nachiyarpuram Police Station, Sivagangai District was transferred to the Sessions Court for Exclusive Trial of Bomb Blast Cases, Ponnamalee, Chennai and the same was taken up for trial as S.C.No.7 of 2017. During trial in S.C.No.7 of 2017, the petitioners and three others pleaded guilty and thereafter, on 30.01.2020, the Trial Court had convicted the petitioners and three others under Sections 120-B r/w 124 A of IPC, Section 15 r/w 16(b) of Unlawful Activities (Prevention) Act, 1967, Section 18 and 20 of Unlawful Activities (Prevention) Act, 1967 and Section 5(a) of Explosive substances Act, 1908 and sentenced them to undergo 5 years Rigorous Imprisonment for each sections. Subsequently, during the trial in Spl.S.C.No.5 of 2014, the petitioners and three others pleaded guilty and the Special Court for NIA Cases at Puducherry vide order dated 04.02.2022, had convicted the petitioners and three others under Sections 120-B r/w Sections 3 and 4 of Explosive substances Act, 1908, Section 4(a), 4(b)(1) and 16(1)(b), 18, 20 and 23 of Unlawful Activities (Prevention) Act, 1967 and sentenced them to undergo 7



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years Rigorous Imprisonment for each Section and the Special Judge at para 125 of the Judgment has observed as follows:-

''125. All the sentences shall run concurrently as per Section 427 Cr.P.C. along with the sentence passed in Special S.C.No.7/2017 on the file of Special Court, Bomb Blasts Cases, Poonamalle since the conspiracy in all the three cases are from the same place. The period of detention already undergone by the accused are ordered to be set off U/s 428 of Cr.P.C. Since all the three incidents are connected to each other.''

(d) The petitioners having been in judicial custody from 11.03.2014 and 27.03.2014, have completed more than 7 years and 10 months in prison and they have also paid the fine amount. However, the respondent authorities have not taken note of the observation of the trial Court regarding concurrent sentence and that they are not obeying the orders of the Trial Court. The petitioners have sent a representation to the Respondent/Jail Authorities on 07.02.2022 to calculate their period of detention and release them, whereas, they have not been considered so far, thereby making their further detention illegal and prayed that direction may be issued to the respondent to consider the representation and set them at liberty forthwith.

3. Learned Additional Public Prosecutor would submit that the petitioners 1 and 2 are in custody from 11.03.2014 and the third petitioner is custody from 27.03.2014 and that they have completed more than seven years in prison.

4. Heard the learned counsel and perused the materials available on record.

5. In S.C.No.7 of 2014, the Sessions Court for Exclusive Trial of Bomb Blast Cases, Ponnammalee, Chennai vide order dated 30.01.2020, had convicted the petitioners to undergo Rigorous Imprisonment for a period of 5 years. Subsequently, the petitioners have been convicted and sentenced to undergo Rigorous Imprisonment for a period of 7 years in Spl.S.C.No.5 of 2014 vide order dated 04.02.2022. The Special Court for NIA Cases at Puducherry in the Judgment in Spl.S.C.No.5 of 2014, specifically at para 125 had observed that the sentence shall run concurrently as per Section 427 Cr.P.C. along with the sentence passed in Special S.C.No.7/2017 on the file of Special Court, Bomb Blasts Cases, Poonamalle since the conspiracy in all the three cases are from the same place. The petitioners having undergone imprisonment for 7 years and 10 months are entitled to be released forthwith.



6. In view of the above, the directions is issued to the respondent to release the petitioners forthwith from prison, if they are not required in any other case.. Accordingly, the Criminal Original Petition is disposed of.

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Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

ham/nr

To

- 1.The Superintendent of Police,
Central Prison,
Chennai-4.
- 2.The Public Prosecutor,
High Court of Madras.
- 3.The Special Court,
Exclusive Trial of Bomb Blasts Cases,
Poonamalle,
Chennai.
- 4.The Special Court,
NIA Cases,
Puducherry.

+5ccs to Mr.P.Pugalenth, Advocate Sr.No.13991

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RVM(03/03/2022)