



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2022

Coram

The Honourable Mr. Justice P.N.PRAKASH
and

The Honourable Mr. Justice A.A.NAKKIRAN

H.C.P.No.1976 of 2021

P.Rajendran

.. Petitioner

Vs.

1.The Commissioner of Police,
Veppery, Chennai.

2.The Assistant Commissioner of Police,
Guindy, Chennai - 32.

3.The Inspector of Police,
Velachery Police Station,
Chennai - 42.

4.N.Kannan
5.N.Balambigai
6.N.Prakash
7.N.Rajeshwari

8.Amma Appa Old Age Home
rep. by its Founder S.Soundravalli
No.4, MDL Flats,
Arignar Anna Colony Street,
Ponnusamy Nagar,
Mannivakkam, Chennai - 48.

9.Mahaveer Illam
rep. by its Manager Ragu Ram
No.137/1, Dr.MGR Street,
Eden Garden, Uthandi,
ECR, Chennai - 119.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the respondents 1 to 3 to secure the body of the detenu P.Elumalai, aged 57 years, S/o. Late Panchatcharam who is physically and mentally disabled from the illegal custody of the respondents 4 to 8 and produce him before this Court for the entrustment of the lawful custody to his brother/petitioner herein.



WEB COPY

For Petitioner : Ms.S.Lakshmi

For Respondents : Mr.R.Muniyappa Raj
Addl. Public Prosecutor
for R1 to R3
Mr.I.Prakash Raj
for R4 to R7
Ms.V.Porkodi for R9

ORDER

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

Seeking a direction to respondents 1 to 3 to secure the body of the detenu P.Elumalai, who is physically and mentally disabled, from the illegal custody of respondents 4 to 8 and produce him before this Court for the entrustment of the lawful custody to his brother/petitioner herein, the present habeas corpus petition has been filed.

2. On 13.12.2021 this Court passed the following order:

To a couple Panchatcharam and Jayalakshmi, eight children were born, four sons and four daughters viz., Murugesan, Narayanan, Rajendran, Elumalai, Pottiammal, Padmini, Vani and Ganga. Murugesan, Narayanan, Vani and Ganga are no more now. Elumalai remains a bachelor. It appears that Panchatcharam had left some properties, which were partitioned amongst his children on 17.10.1988 under which, Elumalai was allotted two grounds in Velacherry. This petition has been filed by Rajendran alleging that Elumalai suffers from mental illness and that Narayanan's children, viz., respondents 4 to 7 herein are keeping Elumalai in illegal detention in Amma Appa Old Age Home (eight respondent herein).

2. We ordered notice to the respondents on the previous hearing.

3. When the matter was taken up for hearing, Rajendran appeared in person and stated that his Advocate Mr.S.Vijayakumar, through whom this petition was filed, has recused himself from this case and so (Rajendran), he is going to appear in person.

4. Mr.I.Prakash Raj [Enrl. No.724/2012] appeared via video conferencing and stated that he is entering appearance on behalf of respondents 4 to 7 and sought time to file counter.

5. Mr.Kangaraj, Sub-Inspector of Police, Velachery Police Station (third respondent), appeared via video conferencing from Amma Appa Old Age Home (eight



respondent herein) and produced Elumalai.

6. We interacted with Elumalai and we observed that there was something wrong with him, which requires a detailed examination by a psychiatrist.

7. Mr. Harikumar, who is in the administration of Amma Appa Old Age Home (eight respondent herein) and who is also a Yoga Master for the inmates, also appeared via video conferencing.

8. Mr. G. Raghuram [Mobile No. 98406 91849], Founder of Mahaveer Illam (ninth respondent herein) was present in person. Mr. G. Raghuram stated that Elumalai was in Mahaveer Illam for a brief period and during that time he exhibited signs of mental illness and there are records available in Mahaveer Illam (ninth respondent herein) in this regard.

9. We are of the view that a complete mental health check up of Elumalai requires to be done by competent doctors in the Institute of Mental Health, Kilpauk. Accordingly, we order as follows:

- (a) the Inspector of Police, Otteri Police Station, Chengalpet District and the authorities of Amma Appa Old Age Home (eight respondent herein) to cause production of Elumalai before the Director, Institute of Mental Health, Kilpauk, for thorough examination of his mental health;
- (b) this order shall be treated by the Director, Institute of Mental Health, Kilpauk, as a reception order and if necessary, the Director, Institute of Mental Health, Kilpauk, can admit Elumalai as an inpatient, for thorough examination and check up;
- (c) Mr. G. Raghuram, Founder of Mahaveer Illam (ninth respondent herein) is directed to submit copies of the medical records of Elumalai to the Inspector of Police, Otteri Police Station, Chengalpet District, who, in turn, shall produce the same to the Institute of Mental Health, Kilpauk;
- (d) The Director, Institute of Mental Health, Kilpauk, after completion of examination of Elumalai, shall send the medical report of Elumalai to this Court through the Inspector of Police, Otteri Police Station, Chengalpet District, in a sealed cover.

Call on 01.02.2022.



WEB COPY

3. On 01.02.2022, this Court passed the following order:

On 13.12.2021, we passed a detailed order in this case. Pursuant to our order dated 13.12.2021, Elumalai was examined by the doctors in the Institute of Mental Health, Kilpauk, Chennai, on 24.12.2021 and thereafter, on 30.12.2021, his admission, as an inpatient, was approved.

2. The Medical Officer, Institute of Mental Health, Kilpauk, Chennai, has sent a report dated 31.01.2022, wherein it is stated as under:

'Course in the hospital	Patient was found to be withdrawn, preoccupied and less communicating and muttering to self. After detailed history, perusal of previous relevant records and doing thorough mental status examination, he was found to be suffering from Psychosis NOS. He was initiated on appropriate treatment.
-------------------------------	---

DMHRB opinion	Admission approved on 30/12/2021 as per the above section.
------------------	--

Current Mental Status Examination	Mr.Elumalai's clinical condition is improving and he attained mental capacity for deciding about admission and treatment and his admission status shifted to section 86 of Mental Health Care Act 2017.'
--	---

3. We interacted with Dr.Anitha of Institute of Mental Health, Kilpauk, Chennai and Elumalai via WhatsApp call and we were told that there is progress in the health condition of Elumalai.

4. Rajendran, the brother of Elumalai, who has filed this petition, appeared via video conferencing and stated that the advocates engaged by him for this case as well in the suit in O.S.No.3399 of 2018 on the file of III Assistant City Civil Court, Chennai, had not properly dealt with the matter and they had recused themselves.

5. Hearing Rajendran's bitter experience with advocates, Ms.S.Lakshmi, Advocate [Enrl. No.81/2015], Mobile No.94454 29674, volunteered to appear pro bono



WEB COPY

for Rajendran.

6. We permit Ms.S.Lakshmi, Advocate, to represent Rajendran in this case. Ms.S.Lakshmi, Advocate, may collect the copies of the petition, affidavit and typed set of papers as also the orders passed by this Court from the Court Officer. Rajendran also agreed to give vakalath to Ms.S.Lakshmi, Advocate.

7. Surprisingly, neither Mr.I.Prakash Raj nor his clients, viz., respondents 4 to 7 were present during this hearing either in person or via video conferencing. Mr.I.Prakashraj, Advocate, has not given his mobile number for the Registry to contact him.

8. The online status of O.S.No.3399 of 2018 on the file of III Assistant City Civil Court, Chennai, shows that Narayanan [first defendant] has died and steps should be taken by the plaintiff for impleading his legal heirs. It is also seen that summon has not been served on Kannan, the second defendant, who is the fourth respondent herein. Therefore, we direct the Inspector of Police, Velachery Police Station, Chennai [third respondent herein] to cause production of Kannan [fourth respondent herein] before us, in person, on the next hearing date.

Call on 22.02.2022.

4. On 22.02.2022, this Court passed the following order:

Heard Ms.S.Lakshmi, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondents 1 to 3.

2. In our order dated 01.02.2022, we directed the Inspector of Police, Velachery Police Station, Chennai, third respondent herein, to cause production of Kannan, fourth respondent herein, before us.

3. On instructions, the learned Additional Public Prosecutor submitted that when Kannan was contacted by the Velacherry police, he told them that he would appear before this Court with his Advocate today.

4. However, neither Kannan nor his Advocate turned up before this Court. Rajendran, petitioner herein and his family members are present before this Court.

5. The learned Additional Public Prosecutor produced a medical report dated 01.02.2022 issued by the Institute of Medical Health, Kilpauk, Chennai, which states that the condition of Elumalai is improving.

6. We direct the Institute of Medical Health,



WEB COPY

Kilpauk, Chennai, not to discharge Elumalai until further orders of this Court, as it would not be safe to give custody of Elumalai to any person at this juncture.

7. We also direct some responsible Medical Officer from the Institute of Medical Health, Kilpauk, Chennai, to appear before this Court via video conferencing on 24.02.2022.

8. The learned Additional Public Prosecutor submitted that he would ensure the appearance of Kannan before this Court on 24.02.2022.

Post the matter on 24.02.2022.

5. On 24.02.2022, this Court passed the following order:

Pursuant to our order dated 22.02.2022, Mr.S.Kanagaraj (Mobile No.70100 92193), Sub-Inspector of Police, J-7, Velacherry Police Station (L & O), Chennai, is present. He produced Kannan, 4th respondent herein, before this Court.

2. Mr.I.Prakashraj (Enrollment No.724/2012; Mobile No.9003239596), learned counsel has entered appearance for the respondents 4 to 7.

3. This Court informed Kannan (R4) that Elumalai represented by his brother Rajendran has filed a suit in O.S.No.3399 of 2018 in the III Assistant City Civil Court, Chennai, against him, so that, he could enter appearance, if not already entered.

4. The learned counsel for the respondents 4 to 7 seeks time for filing his counter affidavit.

5. We direct Amma Appa Old Age Home, 8th respondent herein and Mahaveer Illam, 9th respondent herein, to file a detailed affidavit as to the dates and circumstances, under which, Elumalai admitted in their homes along with the copies of the supporting records, failing which, this Court would view the matter very seriously.

6. The third respondent/police is directed to ensure the presence of a responsible officer from the respondents 8 and 9 before this Court on 11.03.2022.

7. The learned counsel for the parties submitted that the house property of Elumalai is not in occupation of anyone for the time being, as Elumalai is now in the Institute of Mental Health, Kilpauk.

8. Therefore, we direct the third respondent/police to lock the house property of Elumalai and keep the keys with them until further orders of this Court.

Post the matter on 11.03.2022.



WEB COPY

6. On 11.03.2022, this Court passed the following order:

Pursuant to our order dated 24.02.2022, Mr.S.Kanagaraj, Sub-Inspector of Police, J-7 Velacherry Police Station (L&O), Chennai, [Mobile No.70100 92193], made arrangements to speak to Elumalai via Whatsapp video call, who is under treatment in the Institute of Mental Health, Kilpauk and Dr.Kavitha, Senior Assistant Professor, who is treating Elumalai.

2. On enquiry, Dr.Kavitha stated that Elumalai is fit for discharge and that he has been asking to be discharged. When we enquired Elumalai, he stated that he wants either go to Amma Appa Old Age Home [eighth respondent herein] or Mahaveer Illam [ninth respondent herein], as his house in Velacherry is inhabitable now. Mr.S.Kanagaraj, Sub-Inspector of Police, has also confirmed that the house, which is under the lock and key of the police, is inhabitable and requires lot of repairs.

3. Mr.G.Raghuram, Managing Trustee of Mahaveer Illam, [Mobile No.98406 91849] is present along with Mr.R.Sivakumar, Advocate [Enrl. No.824/1998] [Mobile No.93806 77147].

4. As directed by us, Mr.G.Raghuram, on behalf of Mahaveer Illam, has filed an affidavit dated 11.03.2022 narrating the circumstances under which Elumalai was admitted by Kannan on 03.04.2015 and after various spells of stay, Kannan had taken Elumalai away on 01.05.2018.

5. There is no representation for Amma Appa Old Age Home [eighth respondent herein]. However, today, they appeared to have contacted Mr.R.Muniyapparaj, learned Additional Public Prosecutor and told him that they would file their affidavit on the next hearing date.

6. Mr.Rajendran, the petitioner herein and his family members are present.

7. Now the question is, where to lodge Elumalai, if he is discharged from the Institute of Mental Health, Kilpauk.

8. Since both the legs of Elumalai were amputated, someone has to be with him to take care of him throughout. Therefore, though the learned counsel for Kannan had his own reservations about putting Elumalai in Mahaveer Illam, we are of the opinion that, as an interim measure, it would be advisable to shift Elumalai from the Institute of Mental Health, Kilpauk, to Mahaveer Illam in Uthandi and the expenses for maintaining Elumalai there should be equally shared by



WEB COPY

Rajendran and Kannan. Mahaveer Illam [ninth respondent herein] shall provide free access to Rajendran and Kannan, whenever they come there for visit.

9. We direct discharge of Elumalai from the Institute of Mental Health, Kilpauk, Chennai and the second respondent police shall lodge him in Mahaveer Illam [ninth respondent herein]. At the time of discharge, both Rajendran and Kannan can be present in the Institute of Mental Health, Kilpauk. The police shall collect the discharge summary from the Institute of Mental Health, Kilpauk and hand over the original thereof to Mahaveer Illam [ninth respondent herein], which shall keep it in safe custody. A copy of the discharge summary shall be furnished to this Court as well to the III Assistant City Civil Court, Chennai, in O.S.No.3399 of 2018 and also to Rajendran and Kannan.

For further hearing, call on 25.03.2022.

7. Today, when the matter was taken up for hearing, Mr.S.Kanagaraj, Sub Inspector of Police, J7 Velacherry Police Station, Chennai is present. Petitioner and his family members are present with their advocate Ms.S.Lakshmi. Kannan/fourth respondent is present before this Court along with his advocate Mr.I.Prakash Raj. Mr.Raguram, Founder and Managing Trustee of Mahaveer Illam is present with his advocate Ms.V.Porkodi.

8. On instructions, learned Additional Public Prosecutor submitted that pursuant to the order of this Court dated 13.12.2021, Elumalai has been discharged from the Institute of Mental Health, Kilpauk, Chennai and has been lodged in Mahaveer Illam on 24.03.2022. A copy of the discharge summary was submitted to us. Rajendran and family and Kannan submitted that they would equally share the expenses of Elumalai in Mahaveer Illam.

9. As regards the dispute between Rajendran and family and Kannan qua the property of Elumalai, we leave it to the III Assistant City Civil Court, Chennai to decide the matter in O.S. No.3399 of 2018. We are of the opinion that both Rajendran and family and Kannan are interested in taking care of Elumalai and therefore there is every possibility of an amicable settlement if they are referred to mediation in O.S. No.3399 of 2018.

10. Though in paragraph 8 of the earlier order dated 24.02.2022 extracted above, we had directed the third respondent/police to lock the house of Elumalai and keep the keys with them until further orders of this Court, we are informed by the learned Additional Public Prosecutor that the house does not have any door even and it is in dilapidated condition and therefore the police were not able to lock the



house. Mr.Kannan stated that he would not further encumber the property and also would take earnest steps to release the property from encumbrance within his means.

11. In view of the above, nothing more survives in this habeas corpus petition and the same is accordingly closed with liberty to the parties to work out their remedies in the manner known to law before appropriate Court. It is always open to both parties to decide mutually for shifting Elumalai out of Mahaveer Illam, if they so desire, as it is a purely temporary arrangement made by this Court.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mmi

To

1.The Commissioner of Police,
Veppery, Chennai.

2.The Assistant Commissioner of Police,
Guindy, Chennai - 32.

3.The Inspector of Police,
Velachery Police Station,
Chennai - 42.

4.The Manager,
Mahaveer Illam
No.137/1, Dr.MGR Street,
Eden Garden, Uthandi,
ECR, Chennai - 119.

5.The Public Prosecutor,
High Court, Madras.

Copy To:

The III Assistant City Civil Court,
Chennai.

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.20250

H.C.P.No.1976 of 2021

PL(CO)
SB(06/04/2022)