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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2022

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

H.C.P.NOS.2767 AND 2776 OF 2019
AND
CRL.M.P.NOS.10001 AND 10002 OF 2021

Choe Jae Won
S/o.Choe Yang Yoel

.. Petitioner in H.C.P.No.2767/2019

Choi Yong Suk
S/o.Beak Kyu Choi

.. Petitioner in H.C.P.No.2776/2019

Vs.

1. State represented by
The Superintendent of Prisons,
Central Prison II,
Puzhal, Chennai.
 2. Officer In Charge,
Special Camp,
Tiruchirappalli.
 3. The Principal Secretary to the Government (FAC),
Government of Tamil Nadu,
Public (Foreigners - I) Department,
St.George Fort, Chennai.
 4. The Superintendent of GST and Central Excise,
Enforcement Compliance Management Section,
Chennai Outer GST and Central Excise
Commissionerate,
Newry Towers, No.2054-1, II Avenue,
Anna Nagar, Chennai - 600 040.
- [R3 & R4 impleaded as per order in
Crl.M.P.Nos.18603 & 18605/2019
in H.C.P.Nos.2767 & 2776/2019
dated 13.12.2019]

.. Respondents in both petitions



Habeas Corpus Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records pertaining to the order dated 21.11.2019 made in No.2111/T.K.1/2019 on the file of the first respondent and quash the same.

For Petitioners : No appearance
[in both petitions]

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
[R1 to R3]
Mr.K.Srinivasan
Special Public Prosecutor
[ED] [R4]

COMMON ORDER

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

These petitions have been filed seeking quash of the order dated 21.11.2019 passed in No.2111/T.K.1/2019 on the file of the first respondent.

2. On 13.12.2021, we passed a detailed order, which reads as follows:

'M/s.Chowel India Private Limited is a company incorporated under the Indian Companies Act, 1956 and was manufacturing certain car components. Their manufacturing unit was located in Sriperumbudur Industrial Estate. One Choi Yong Suk [A2] was the Managing Director and Choe Jae Won [A3] was the General Manager (Finance) [petitioners herein] of the said company. Both of them are South Korean nationals. During the course of their business, it is alleged by the GST authorities that the company had collected around Rs.40,00,37,447/- as GST, but had not remitted the same to the department. In connection with that, the GST department registered a case in F.No.C.No.IV/06/107/2019-ECM and took up investigation of the case.

2. The petitioners herein were arrested by the GST authorities on 24.06.2019 and they were granted default bail u/s.167(2) Cr.P.C. by the learned Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Chennai, on 19.11.2019 in CrI.M.P.No.455 of 2019. Since the petitioners are South Korean



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nationals, the State of Tamil Nadu vide G.O. (1D) No.360, Public (Foreigners.I) Department dated 02.08.2019 lodged them in the special camp for foreigners in Trichy on 20.11.2019. Challenging the same, the petitioners filed the present Habeas Corpus Petitions.

3. During the pendency of these petitions, they also filed two writ petitions in W.P.Nos.7435 and 7437 of 2020 for a mandamus to shift them from the special camp to their house at Kancheepuram so that they are not afflicted by Covid-19. These two writ petitions were dismissed by this Court on 09.04.2020 by a common order, challenging which, they filed SLP (Crl.) Diary No.11084 of 2020 before the Supreme Court. The Supreme Court passed the following order on 16.06.2020:

'Having heard learned counsel for the parties and considering that both the petitioners are South Korean nationals who are the General Manager (Finance)/CEO and Managing Director of Chowel India Private Limited, respectively, we are of the view that the interest of justice requires that the petitioners be detained at the residential house which has been taken on lease by them viz., 804, Belchamp Hiranandani Park, Thriveni Nagar, Oragadam, Kanchipuram, Tamil Nadu, 603204.

The State may make all suitable arrangement for security which will be paid for fully by the petitioners.

The special leave petitions stand disposed of.'

4. Accordingly, the petitioners were shifted from the foreigners camp to their residential house at Door No.804, Belchamp Hiranandani Park, Thriveni Nagar, Oragadam, Kanchipuram - 603204 and the Superintendent of Police, Chengalpet, provided necessary security around the apartment to ensure that they do not escape. In the meanwhile, the GST authorities completed the investigation and filed a complaint in E.O.C.C.No.1 of 2020 in the Court of the Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Chennai, for the offences under the GST Act against the said company and the petitioners.

5. When these petitions were being heard, it was brought to our notice that the petitioners were not



being produced before the trial Court in E.O.C.C.No.1 of 2020.

6. Learned counsel for the petitioners submitted that the petitioners were willing to appear before the trial Court, but, it was only the police, who were not producing them before the said Court.

7. The petitioners filed miscellaneous petitions in CrI.M.P.Nos.10001 & 10002 of 2021 in the pending habeas corpus petitions for a direction to produce them before the learned Additional Chief Metropolitan Magistrate, EO-I, Egmore, Chennai, on the hearing dates of E.O.C.C.No.1 of 2020. This Court, by order dated 28.09.2021, directed the Superintendent of Police, Chengalpet District, to cause production of the petitioners before the trial Court with adequate escort. Accordingly, the Superintendent of Police, Chengalpet District, produced them before the trial Court on the hearing date viz., 04.10.2021 with adequate escort. The trial Court adjourned the case to 26.10.2021. After attending the hearing, they were brought back to their residence by the escort police on the same day evening.

8. The State police received intelligence that the petitioners had planned their escape with the help of some local people and had fabricated certain documents like Aadhar Card and passport. It may be pertinent to state here that the original passports of the petitioners were submitted to the GST authorities at the time of their interrogation and arrest, and their passports are still with the GST authorities. Therefore, the petitioners had to fabricate passports for their escape. When the police obtained credible materials to show that the petitioners were attempting to escape, they registered a case in Palur P.S.Crime No.408 of 2021 on 11.10.2021 for the offences u/s.420, 468, 471, 224 and 511 IPC against the petitioners. However, the police did not arrest them immediately for the reasons best known to them. The petitioners filed an application in CrI.O.P.No.19773 of 2021 u/s.438 Cr.P.C seeking anticipatory bail before this Court in Palur P.S.Crime No.408 of 2021. A learned single Judge dismissed the said anticipatory bail petition on 26.10.2021.

9. The petitioners filed SLP (CrI.) Diary No.26255 of 2021 [now renumbered as SLP(CrI.) No.8410 of 2021]



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before the Supreme Court against the dismissal of their anticipatory bail petition and the same is still pending. It is reported that in the said petition, an interim order dated 29.10.2021 was passed by the Supreme Court staying the arrest of the petitioners in Crime No.408 of 2021. Thus, the petitioners protected themselves from arrest by the police in Crime No.408 of 2021.

10. It appears that between 29.10.2021 and 30.10.2021, the petitioners have escaped from their residence and they became scarce. On coming to know of this great escape, the local police registered a fresh First Information Report in Palur P.S.Crime No.421 of 2021 u/s.224 IPC on 03.11.2021. Since then, the State police is searching for the petitioners through out the length and breadth of India, but to no avail.

11. On our direction, the Superintendent of Police, Chengalpet, has filed a status report dated 13.12.2021 narrating the steps that are being taken by the police to apprehend the petitioners. A reading of the status report shows that the petitioners had reached Imphal, Manipur and thereafter, there seems to be no clue for the local police. It is suspected that they would have crossed the borders of India through the Indo-Burma border and thereafter, they would have escaped to their country. The police also suspect the involvement of some officials in the South Korean Embassy for facilitating the escape, especially, for getting them fake passports.

12. In our opinion, this case has international ramifications and therefore, the local police will not be able to properly investigate the case and bring back the desperadoes. Therefore, we exercise our powers under Article 226 of the Constitution of India and transfer the investigation of the case in Palur P.S.Crime Nos.408 and 421 of 2021 to the file of Central Bureau of Investigation, Chennai. It is only the CBI, which can effectively investigate this case from all angles, including the involvement of the local police as well the staff of the South Korean embassy. That apart, it is the CBI, which is the nodal agency to seek extradition of fugitives from other countries.

13. Accordingly, we direct the Superintendent of Police, Chengalpet District, to handover the case papers pending in Palur P.S.Crime Nos.408 and 420 of



2021 to the Central Bureau of Investigation, Chennai, immediately and we direct the Central Bureau of Investigation, Chennai, to take up the investigation of the cases and file a status report before this Court.

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14. Mr.C.Arunkumar, learned counsel appearing for the petitioners, submitted that after he came to know of petitioners' escape, he has sent emails to the counsel, who had engaged him in these cases, notifying that he is withdrawing his vakalathnama in these cases.

15. Mr.C.Arunkumar, learned counsel, has also made a similar request to us to permit him to withdraw from these cases. Since we may need his service in future, we are not acceding to his request for the present.

16. Registry is directed to print the name of Mr.K.Srinivasan, learned Special Public Prosecutor for Central Bureau of Investigation.

Call on 25.01.2022.'

3. Pursuant to the above, the Central Bureau of Investigation took over investigation of both the cases from the State police and Palur P.S.Crime No.408 of 2021 has been re-registered as R.C.No.032/2022/A/0001 on 31.01.2022 and Palur P.S.Crime No.421 of 2021 has been re-registered as R.C.No.032/2022/A/0002 on 31.01.2022 and investigation by the Central Bureau of Investigation is in progress.

4. Mr.K.Srinivasan, learned Special Public Prosecutor [ED], submitted a status report dated 14.03.2022 filed by the Inspector of Police, Central Bureau of Investigation, in a sealed cover, which we carefully perused.

5. On a reading of the status report, it is seen that the Central Bureau of Investigation is investigating both the cases from various angles and it appears that the two accused viz., Choe Jae Won and Choi Yong Suk have escaped from India via Manipur. In view of the aforesaid developments, nothing survives in these petitions.

6. Accordingly, these Habeas Corpus Petitions are closed with a direction to the Central Bureau of Investigation to proceed with the investigation in both the cases and take them to their logical conclusion. Consequently, connected miscellaneous petitions are closed.



7. We are of the view that the status report filed by the Central Bureau of Investigation should not form part of the Court records as it contains some investigation details, which should be kept as a secret. Therefore, we have returned the status report back to Mr.K.Srinivasan, learned Special Public Prosecutor [ED], in the same cover.

Since Mr.C.Arunkumar, Advocate, has been consistently requesting this Court to relieve him from these cases as his clients had committed acts of breach of faith by escaping from India, his request is acceded to and his name may not be printed as the counsel for the petitioners in the order.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

gm

To

1. The Principal Secretary to the Government (FAC),
Government of Tamil Nadu,
Public (Foreigners - I) Department,
St.George Fort, Chennai.
2. The Superintendent of GST and Central Excise,
Enforcement Compliance Management Section,
Chennai Outer GST and Central Excise
Commissionerate,
Newry Towers, No.2054-1, II Avenue,
Anna Nagar, Chennai - 600 040.
3. The Central Bureau of Investigation,
Chennai.
4. The Superintendent of Police,
Chengalpet.
5. The Inspector of Police,
Palur Police Station.
6. The Superintendent of Prisons,
Central Prison II,
Puzhal, Chennai.



7. The Officer In-charge,
Special Camp,
Tiruchirappalli.

8. The Special Public Prosecutor
[CBI cases],
High Court, Madras.

9. The Additional Chief Metropolitan Magistrate,
EO-I, Egmore, Chennai.

10. The Public Prosecutor,
High Court, Madras.

H.C.P.Nos.2767 and 2776 of 2019

SS(CO)
RLP(01/04/2022)