



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

H.C.P. (MD) No.1071 of 2022

WEB COPY

P.Nalini

... Petitioner/Wife of detenu

-vs-

1.The Superintendent of Central Prison,
Madurai Central Prison,
Madurai.

2.The Inspector of Police,
Abiramam Police Station,
Ramanathapuram District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus directing the respondents to produce the body of detenu by name Muthuramalingam S/o.Thavasi Thevar aged about 45 years, now confined at Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.Niranjana S.Kumar
for J.William Christopher
For Respondents : Mr.A.Thiruvadikumar,
Additional Public Prosecutor

O R D E R

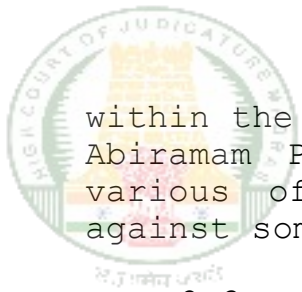
[Made by P.N.PRAKASH, J.]

This habeas corpus petition has been filed seeking to direct the respondents to produce the body or person of the petitioner's husband viz., Muthuramalingam S/o.Thavasi Thevar, aged about 45 years, before this Court and set him at liberty.

2. This habeas corpus petition raises an interesting conundrum, to decide which, the following facts are essential.

2.1. For the sake of convenience, we would refer to the detenu by his name, Muthuramalingam.

2.2. In connection with an incident of attempt to murder that took place on 28.04.2006, a case in Abiramam Police Station Crime No.53 of 2006 was registered for various offences, including the offence under Section 307 IPC, against some accused, including Muthuramalingam. On the same day, an offence of murder had occurred



within the same police station limits and therefore, a fresh case in Abiramam Police Station Crime No.54 of 2006 was registered for various offences, including the offence under Section 302 IPC, against some accused including Muthuramalingam.

2.3. After completing the investigation in both the crime numbers, the Inspector of Police, Abiramam Police Station, filed two final reports before the jurisdictional Magistrate. On the case being committed to the Court of Session, Ramanathapuram District, the two cases were taken on file as S.C.No.27 of 2007 (Abiramam P.S. Crime No.54 of 2006) and S.C.No.28 of 2007 (Abiramam P.S. Crime No.53 of 2006) and the same were made over to the Additional District Sessions Court, (Fast Track Court), Paramakudi, Ramanathapuram District, for trial.

2.4. It appears that, the learned Trial Judge conducted simultaneous trial in both the Sessions cases and by two judgments, both dated 23.09.2020, convicted and sentenced all the accused to various terms of imprisonment.

2.5. As regards Muthuramalingam, in S.C.No.27 of 2007 (Abiramam P.S. Crime No.54 of 2006), he was convicted of the offence under Section 302 IPC and was sentenced to undergo life imprisonment, apart from his conviction and sentence for other offences. Similarly, in S.C.No.28 of 2007 (Abiramam P.S. Crime No.53 of 2006), Muthuramalingam was convicted and sentenced for various offences, the maximum being for the offence under Section 307 IPC, in which, he was convicted and sentenced to undergo imprisonment for seven years. The Sessions Judge had directed that the sentences imposed in S.C.No.27 of 2007 (Abiramam P.S. Crime No.54 of 2006) and S.C.No.28 of 2007 (Abiramam P.S. Crime No.53 of 2006) shall run concurrently.

2.6. On the day when the two judgments were pronounced by the Trial Court, Muthuramalingam was on bail in both the cases. Therefore, on his conviction and sentences, he was committed to the prison for undergoing the same.

2.7. Challenging the convictions and sentences, Muthuramalingam preferred CrI.A(MD).No.29 of 2021 against S.C.No.28 of 2007 (Abiramam P.S. Crime No.53 of 2006) and CrI.A(MD).No.27 of 2021 against S.C.No.27 of 2007 (Abiramam P.S. Crime No.54 of 2006) before this Court.

2.8. The appeal preferred by him in CrI.A(MD).No.29 of 2021 was admitted by a learned Single Judge of this Court, but, suspension of sentence and bail was refused.

2.9. Since, Muthuramalingam was convicted and sentenced for life imprisonment in S.C.No.27 of 2007 (Abiramam P.S. Crime No.54 of 2006), his appeal in CrI.A(MD).No.27 of 2021 came up before a



suspension of sentence and bail was not granted to him by the Division Bench. However, when Crl.A(MD).No.27 of 2021 came up for final disposal before the Division Bench, a direction was issued to tag Crl.A (MD).No.29 of 2021 along with Crl.A (MD).No.27 of 2021.

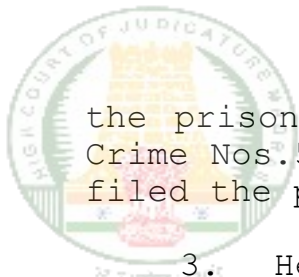
2.10. The connected appeals of the co-accused in both the cases, namely, S.C.No.27 of 2007 (Abiramam P.S. Crime No.54 of 2006) and S.C.No.28 of 2007 (Abiramam P.S. Crime No.53 of 2006) were also tagged and heard by the Division Bench along with the appeals of Muthuramalingam.

2.11. The Division Bench, by judgment and order dated 29.04.2022, allowed all the appeals of all the accused by holding that the accused in the cases should have been tried in a single Sessions trial, as the offences in Abiramam Police Station Crime Nos.53 of 2006 and 54 of 2006 were committed in the course of the same transaction.

2.12. However, after allowing the appeals and setting aside the judgments and orders of the Trial Court, the Division Bench has issued the following directions:-

"19. Accordingly, all the criminal appeals will stand allowed and the judgments in S.C.Nos.27 and 28 of 2007 on the file of the Additional District Sessions Court, Paramakudi, Ramanathapuram District, are set aside and both the sessions cases will stand remitted to the trial Court for a joint trial with a direction to the trial Court to conduct a joint trial of both the cases. Considering the fact that the occurrence took place in the year 2006 and the trial was concluded in the year 2020, we direct the trial Court to complete the trial within a period of three months from the date of receipt of the records from this Court. It is made clear that the accused persons shall co-operate with the trial Court in concluding the trial within the period fixed above. The accused persons are at liberty to move the trial Court seeking bail and the trial Court will consider the bail applications sympathetically in the light of the fact that a re-trial has been directed by this Court. If the trial Court finds that the appellants adopt dilatory tactics, it will be open to the trial Court to ensure their presence by recalling the bail orders and remanding them to custody as pointed out by the Hon'ble Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh reported in AIR 2001 SC 1403."

2.13. It is the grievance of Muthuramalingam that, after his appeals were allowed by the Division Bench as stated above, he should have been released from custody and his further detention in



the prison for these two cases, namely, Abiramam Police Station Crime Nos.53 of 2006 and 54 of 2006 is illegal and therefore, he has filed the present habeas corpus petition.

3. Heard Mr.Niranjan S.Kumar, learned counsel for the petitioner and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor for the respondents. Mrs.M.Kalaivani, Inspector of Police, Abiramam Police Station, is present before this Court.

4. Mr.Niranjan S.Kumar, learned counsel for the petitioner submitted that, Muthuramalingam was on bail when the Trial Court convicted and sentenced him on 23.09.2020 in S.C.Nos.27 and 28 of 2007; *ex consequenti*, when the judgments and orders of the Trial Court were set aside by the High Court in appeals, he should have been released from the prison, if not required in any other case, set at liberty and thereafter, as directed by the Division Bench, he should appear before the Trial Court and seek regular bail.

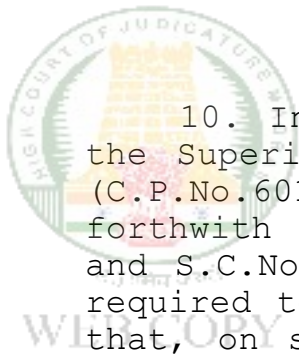
5. We find sufficient force in the submissions of Mr.Niranjan S.Kumar inasmuch as, when the Trial Court judgments have been set aside by the High Court and the matter having been remanded to the Trial Court again, Muthuramalingam should have been put in the same position he was in as on 23.09.2020, when the Trial Court convicted and sentenced him.

6. Admittedly, on 23.09.2020, Muthuramalingam was on bail in S.C.No.27 of 2007 (Abiramam P.S. Crime No.54 of 2006) and S.C.No.28 of 2007 (Abiramam P.S. Crime No.53 of 2006) and therefore, his further detention in S.C.Nos.27 and 28 of 2007 from 29.04.2022, is illegal.

7. In view of the bar under Section 362 Cr.P.C., Muthuramalingam cannot approach the Division Bench for modification of the directions issued in paragraph No.19 extracted supra.

8. Mr.Thiruvadi Kumar, learned Additional Public Prosecutor, placed strong reliance on the judgments of the Supreme Court in ***Serious Fraud Investigation Office v. Rahul Modi & Another [(2019) 5 SCC 266]*** and ***Gautam Navlakha v. National Investigation Agency, [(2021) SCC Online SC 382]***, and submitted that, Muthuramalingam should have to seek bail.

9. However, we pointed out to Mr.Thiruvadi Kumar that, Muthuramalingam is not in the prison now pursuant to an order passed either under section 167 or 309 IPC, but is in the prison as a convict prisoner, based on the conviction warrant issued by the Trial Court for undergoing the sentence imposed upon him on 23.09.2020. Therefore, on facts, ***Rahul Modi*** and ***Gautam Navlakha*** (supra) would not apply to the case on hand.



10. In the result, this habeas corpus petition is allowed and the Superintendent, Central Prison, Madurai, where Muthuramalingam (C.P.No.6013) is lodged, is directed to release Muthuramalingam forthwith in S.C.No.27 of 2007 (Abiramam P.S. Crime No.54 of 2006) and S.C.No.28 of 2007 (Abiramam P.S. Crime No.53 of 2006), if not required to be detained in any other case. It is needless to state that, on such release, Muthuramalingam is required to comply with the directions issued by the Division Bench in paragraph No.19 extracted supra.

11. It is seen that, while granting bail to Muthuramalingam in Abiramam Police Station Crime Nos.53 and 54 of 2006, the learned Single Judge of this Court has imposed the following conditions:-

"(ii) the petitioner shall report before the trial Court on all working days at 10.30 a.m. and on all hearing dates without fail;

(iii) The petitioner shall not abscond either during investigation or trial;

(iv) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];"

12. Since we are putting Muthuramalingam in the place he was as on 23.09.2020, he is required to comply with the aforesaid bail conditions, under which, he was granted bail in Abiramam Police Station Crime Nos.53 and 54 of 2006.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

30/06/2022

Sub Assistant Registrar(CS)

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To:

1.The Sessions Judge,
Ramanathapuram District.

2.The Additional District Judge,
(Fast Track Court), Paramakudi,
Ramanathapuram District.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Additional District Sessions Judge,
Paramakudi, Ramanathapuram District.

4.The Judicial Magistrate,
Kamuthi, Ramanathapuram District.

5.The Superintendent of Central Prison,
Madurai Central Prison,
Madurai.

6.The Inspector of Police,
Abiramam Police Station,
Ramanathapuram District.

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

+1 CC to M/s.J.WILLIAM CHRISTOPHER, Advocate (SR-29156[F]
dated 30/06/2022)

H.C.P. (MD) No.1071 of 2022
30.06.2022

svn (CO)

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