



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P. (MD)No.15539 of 2019

and

W.M.P (MD)Nos.12192 and 12193 of 2019

(Through video Conference)

WEB COPY

Niyas Ahamed

.. Petitioner

Vs.

1.The State through the Secretary,
Home Department,
Saint George Fort,
Chennai.

2.The Superintendent of Police (CBCID),
Q Branch Police, No.220, Panthiyan Road,
Egmore, Chennai.

3.The Passport Office,
Regional Passport Office,
Water Tank Complex,
W.B.Road, Trichy.

4.The Inspector of Police,
Q Branch Police Station,
Thanjavur,
Thanjavur District.

5.The Emigrant Officer,
Bangaluru International Airport,
Bangaluru.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus, to direct the 1st respondent to pay a sum of Rs.20,00,000/- (Twenty Lakhs only) as compensation for the petitioner's illegal detention held on from 02.03.2019 at about 10,00 a.m., to 03.03.2019 at about 05.30 p.m., and consequently to direct the 1st respondent to initiate appropriate action against the 4th respondent.

For Petitioner : Mr.A.Raja
For R1,R2 & R4 : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

For R3 and R5 :Mrs.S.Ravaventhre
Central Government Standing Counsel



O R D E R

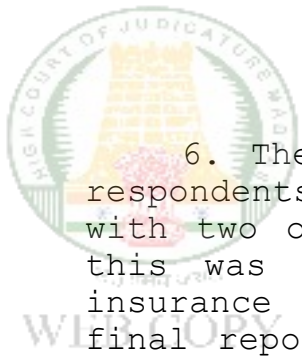
The petitioner has filed this writ petition alleging that the fourth respondent has abuse his power and illegally detained him and therefore, entitled for a compensation of Rs.20,00,000/- for the illegal detention from 02.03.2019 at about 10.00 a.m., to 03.03.2019 at about 05.30 p.m.

2. Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondents.

3. The case of the petitioner is that on 01.02.2006, when he was returning from home after finishing his work at about 10.30 p.m., riding his motorcycle bearing Registration No.TN 49 H 4997, he was hit by one unknown vehicle and due to the said accident he sustained multiple fracture and injury and was treated as inpatient for several weeks. In this connection, he gave a complaint to the Traffic Investigation Wing, Thanjavur and the same was registered in Crime No.42 of 2006 under Sections 279 and 337 IPC. While so, he filed motor accident claim petition seeking compensation for the injury and in his petition in M.C.O.P.No.1057 of 2006, he was awarded a sum of Rs.50,000/- as a compensation.

4. While fact being so, the Senior Divisional Manager of the National Insurance Company lodged a complaint against the petitioner and two others for making a false insurance claim. Based on the complaint given by the insurance company, case was registered against the petitioner and two others in Crime No.6 of 2010 on the file of CBCID Police Station, Thanjavur, for the offence punishable under Sections 420 419 @ 464 r/w 465, 471 r/w 468 IPC. Final report was filed and taken on file by the Judicial Magistrate, Thiruvaiyaru in C.C.No.228 of 2015. The grievance of the petitioner herein is that pending criminal case, he has gone abroad frequently and at one point of time non-bailable warrant was issued against him for non appearance, however, the same was later recalled. When there is no impediment for him to travel abroad, the respondent police has issued Lookout Circular and same was in force even after the NBW was recalled. In such circumstances, when he planned his travel abroad on 02.03.2019 and went to Bangalore Airport, the Emigrant officer, who is the fourth respondent herein took him separately and seized all his belongings including passport and finally detained him stating that LOC has been given against him. Thereafter, the third respondent, who received information from the Emigrant officer came to Bangalore and took the petitioner into custody and produced before the Judicial Magistrate, Thiruvaiyaru at about 5.30 pm.

5. The petitioner has came to Court alleging that the issuance of Lookout Circular, detention at Bangalore Airport, arrest and production before the Judicial Magistrate is illegal and the illegal detention of 32 hours to be compensated in addition the erred



6. The learned Additional Public Prosecutor appearing for the respondents would submit that the petitioner herein in connivance with two others had made fake insurance claim and succeeded. When this was taken cognizance based on the complaint given by the insurance company, CBCID proceeded with investigation and filed final report. The petitioner and other accused did not co-operate with the trial and frequently, they were absent and NBW was issued against this petitioner as early as on 28.12.2016 and was pending for nearly one year.

7. The learned Judicial Magistrate having noted the pendency of NBW against the petitioner herein for more than a year ordered surety action on 20.10.2017. In the said circumstances, coming to know that the petitioner, without intimation to the Court, being frequently visiting abroad and not attending the Court, Lookout Circular was issued.

8. In the said circumstances, on 27.12.2017, the petitioner herein voluntarily surrendered before the Judicial Magistrate and the warrant was recalled. Since the said fact not been brought to the notice of the Emigrant authorities, the Lookout Circular issued against the petitioner was in force. When the petitioner herein attempted to go abroad through Bangalore Airport, he was detained by the Emigrant authorities and information was passed on to the CBCID. The second respondent herein went to Bangalore and secured the petitioner herein and brought him to Thiruvaiyaru and produced him before the Judicial Magistrate. The Judicial Magistrate, on perusal of the records, found that the petitioner herein had voluntarily surrendered on 27.12.2017, therefore, warrant issued against him been recalled, hence, released the petitioner recording his production before him.

9. The learned Additional Public Prosecutor submitted that the petitioner herein, after long absence of one year, appeared before the Court voluntarily and got the warrant recalled on 27.12.2017. Then again abstained from attending Court and filing petitions under Section 317 Cr.P.C., stating false reason. But during that period, the travel document of the petitioner indicates that he was in abroad. While fact being so, the detention of the petitioner at Bangalore Airport, and his production before the Judicial Magistrate is not illegal or abuse of power. The travel time from Bangalore to Thiruvaiyaru has to be excluded and if that time is excluded, the detention of the petitioner at Bangalore Airport and production before the Thiruvaiyaru Magistrate falls within the permissible limit of 24 hours and therefore, the bonafide discharge of duty by police officials cannot be faulted. Further, the learned Additional Public Prosecutor also brought to the notice of this Court that out of the three accused, one of the accused died and remaining two had been in turns abstaining from the Court proceedings and therefore, the period of their absence prolonged for more than six years and recently the



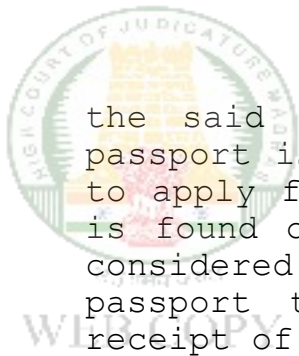
case has been split up and numbered as C.C.No.302 of 2021 and adjourned to 21.02.2022 for further proceedings.

10. The learned counsel for the petitioner would submit that the very essence of Lookout Circular itself is void and illegal. Based on the alleged Lookout Circular, the petitioner ought not to have been detained at the Airport and prevented him from going abroad.

11. This Court, on the face of the allegations made in the affidavit, was initially of the opinion that there is a grave violation of human right and the petitioner's rights have been deprived by non-application of mind of the authorities. However perusing the records, find that the petitioner herein, who was facing the criminal prosecution for fake insurance claim, had no courtesy to inform the Court, which was trying him for the said offence, about his foreign visits, but conveniently been abstaining himself from participating the trial and the NBW was pending against him for nearly one year. Even after recall of the warrant, he had not been interested in attending the Court and the B-diary extract clearly indicates that there was a calculated attempt by the accused persons to delay the trial. In the said circumstances, the Lookout Circular was issued and the petitioner herein would try to fly abroad had been detained at Bangalore Airport and produced before the Judicial Magistrate. The Judicial Magistrate had rightly allowed the petitioner to go free without remanding him to the judicial custody. This will not give an inference that the police has abused that power. Travel to abroad is not an unrestricted right. More so, when a criminal prosecution is pending and the Emigrant authority is of the view that the person, who wants to go abroad is *prima facie* satisfied that he has some criminal antecedents, the same has to be verified. Such actions cannot be painted as abuse of power, particularly, in the case of this nature, when already criminal case pending and warrant issued against him which was followed by Lookout Circular, the bonafide discharge of duty by the authorities cannot be termed as abuse of power warranting disciplinary proceedings.

12. Regarding the allegation of illegal detention, this Court find that the police as well as the Emigrant authorities have every right to detain a person for interrogation, if they suspect the passenger. Unless such suspicion is baseless and detention is malafide one, there is no necessity for the Court to interfere. This is one of such case and therefore, the writ petition is dismissed as devoid of merits. No Costs. Consequently, connected miscellaneous petitions are closed.

13. The learned counsel for the petitioner states that the original passport of the petitioner has been retained by the second respondent police and not returned to him. However, the said



the said circumstances, this Court is of the view that if the passport is not available, then it is open to the petitioner herein to apply for a passport and on such application, if the petitioner is found otherwise eligible for getting passport, the same may be considered on merits and the passport authorities shall issue passport to the petitioner herein within a reasonable time on receipt of the application.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PJL

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The Secretary,
Home Department,Saint George Fort, Chennai.
- 2.The Superintendent of Police (CBCID),
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Egmore, Chennai.
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- 5.The Emigrant Officer,
Bangaluru International Airport, Bangaluru.
- 6.The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.

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RD(21.02.2022) 5P 7C