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H.C.P.No.1137 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

Coram

**THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

H.C.P.No.1137 of 2023

K.Meera

W/o.Karthikeyan

.. Petitioner

VS

1.The Superintendent of Police,
Kancheepuram,
Kancheepuram District.

2.State represented by
Inspector of Police,
B-1, Siva Kanchi Police Station,
Kanchipuram, Kanchipuram District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus pertaining to the illegal custody or illegal detention of Mr.Dinesh Kumar @ Dinesh M/A 42 years, Son of Karthikeyan and consequently, direct the respondents to produce the detenu before this Court and set her at liberty.

For Petitioner : Mr.V.Paarthiban
for Mr.A.Saranraj

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor



ORDER

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[Order of the Court was made by **M.SUNDAR, J.**]

This order will now dispose of the Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity and convenience].

2. This order has to be read in conjunction with and in continuation of the earlier proceedings made in the previous listing yesterday i.e., 27.06.2023, which reads as follows:

'Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity, convenience and clarity] was taken up as a 'Lunch Motion' on being mentioned by Mr.A.Saranraj, learned counsel on record at half past ten in the morning.

2. Short facts are that one Thiru. Dineshkumar @ Dinesh, aged 42 years, (Son of Thiru. Karthikeyan) was arrested yesterday i.e., 26.06.2023 in the evening at around 06.30 pm near Ekambranathar Temple, Kancheepuram; that Thiru. Dineshkumar @ Dinesh [hereinafter 'arrestee' for the sake of brevity, convenience and clarity]; that mother of arrestee is the Habeas Corpus petitioner before us; that the apprehension of the petitioner is that the arrestee may be harmed or even be done away with; that the arrestee has not been produced before any Court until now and this buttresses the apprehension; that Mr.V.Paarthiban, learned counsel appearing on behalf of Mr.A.Saranraj learned counsel on record for the petitioner submitted that the respondents have categorized the arrestee as a Grade 'A' offender and therefore, the apprehension that the respondents will harm or do away with the arrestee is real for this reason also; that the learned



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counsel pointed out and emphasized that the arrestee is not being produced before Court until this point of time though it is now 21 hours from the time of arrest.

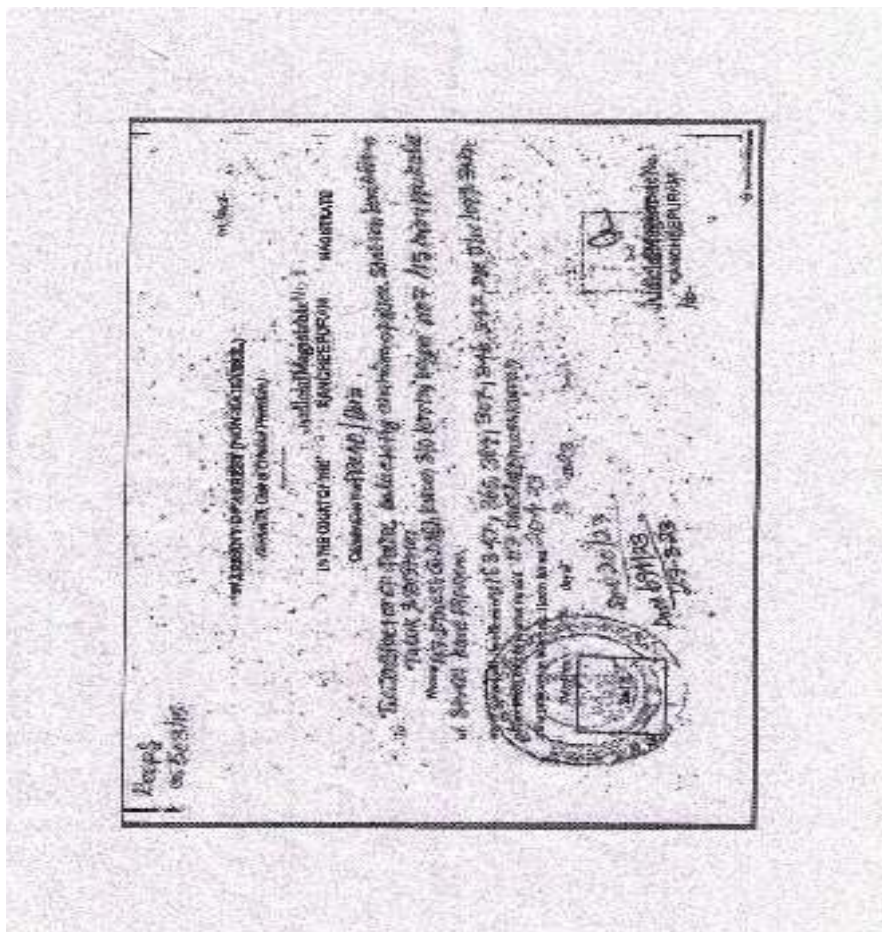
3. Issue notice.

4. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepted notice for both respondents.

5. Learned Prosecutor on instructions from Mr.J.Vinayagam, Inspector of Police, B-1 Siva Kanchi Police Station submitted as follows:

(i) it is true that the aforementioned arrest of the arrestee was effected yesterday i.e., 26.06.2023;

(ii) the arrest was pursuant to a warrant issued by the Court of Judicial Magistrate No.I, Kancheepuram and a scanned reproduction of the warrant (as placed before us by the learned prosecutor) is as follows:





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6. To be noted, the aforementioned warrant has been issued by Court of Judicial Magistrate No.I, Kancheepuram, under Section 70 of Code of Criminal Procedure, 1973 [hereinafter 'Cr.P.C.,' for the sake of brevity, convenience and clarity].

7. It is seen that the warrant is addressed to the Inspector of Police, Baluchetty Chatram Police Station, Kancheepuram.

8. To be noted, the second respondent is the Inspector of Police, B-1, Siva Kanchi Police Station, Kancheepuram. From the official website we find that both these Police Stations are within the jurisdiction of Judicial Magistrate Court No.I, Kancheepuram.

9. The arrestee will be produced before the 'Judicial Magistrate No.I, Kancheepuram' ('said Judicial Magistrate' for the sake of convenience) within 24 hours.

10. We find that the arrest is pursuant to a warrant and therefore, Section 57 of Cr.P.C., may not operate but Section 76 of Cr.P.C., will operate as the warrant has been issued under Section 70 of Cr.P.C.

11. To be noted, Sections 57 and 76 of Cr.P.C., reads as follows:

'57. Person arrested not to be detained more than twenty- four hours. - No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.'



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Section 76 of Cr.P.C., :

'76. Person arrested to be brought before Court without delay.- The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person:

Provided that such delay shall not, in any case, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

12. We notice the difference qua the language in which Section 57 of Cr.P.C., and Section 76 of Cr.P.C., are couched, from a plain reading of these provisions, it appears that while Section 57 of Cr.P.C., vests the police with power to detain for investigation under Section 76 of Cr.P.C. the police have to bring the arrestee before the Court without unnecessary delay and there is no mention about investigation or detention for investigation. There is a proviso to Section 76 of Cr.P.C., which talks about the delay but the proviso presupposes a delay. This means that while under Section 57 of Cr.P.C., the police can detain a person for 24 hours for the purpose of investigation, under Section 76 of Cr.P.C., there are no such powers to the police but the police should produce the person before the Court without unnecessary delay. To be noted, we find this principle ingrained in Article 22(2) of the Constitution.

13. To be noted, the above are prima facie views subject to further arguments of both sides. For the present, learned Prosecutor on instructions submits that the fear / apprehension of the petitioner is unfounded, the police have not harmed the arrestee in any manner and that the arrestee will be produced before Judicial Magistrate No.I, Kancheepuram by 04.00 pm today.



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14. *Learned Prosecutor also submits on instructions that the arrestee is in Baluchetty Chatram Police Station, but this is subjected to disputation by learned counsel for petitioner on instructions. We shall embark upon further enquiry in this regard if need arises.*

15. *We make it clear that we are embarking upon this exercise in a HCP legal drill as prima facie it appears that under Section 76 of Cr.P.C., non-production of the arrestee (read in the context of Article 22(2) which makes this constitutionally imperative) without any unnecessary delay would mean that the arrest is in contravention of Section 76 of Cr.P.C., and which in turn would mean that the arrest can be construed as illegal.*

16. *For the present, let the arrestee be produced before said Judicial Magistrate i.e., Judicial Magistrate No.I, Kancheepuram, forthwith latest by 04.00 pm by today as submitted by learned prosecutor on instructions and said learned Judicial Magistrate shall proceed with the matter on its own merits and in accordance with law, uninfluenced by the pendency of the captioned HCP in this Court. We requisition a report in this regard from the first respondent by 30.06.2023.*

17. *Let this matter be listed in the 'Additional List' tomorrow. List on 28.06.2023.*

18. *We have noticed that the warrant ought to have been executed on or before 20.04.2023 but admittedly the arrestee has been picked up only yesterday (26.06.2023). If there is extension, let those papers also be shown as part of the report.'*

3. The aforementioned order made yesterday (27.06.2023) has to



be read as an integral part and parcel of this order. This means that short forms, abbreviations and short references used in the aforementioned proceedings made in the previous listing will continue to be used in the instant order also.

4. Today, Mr.V.Paarthiban, learned counsel appearing on behalf of Mr.A.Saranraj, learned counsel on record for petitioner, Mr.E.Raj Thilak, learned Additional Public Prosecutor, instructed by Mr.G.Venkatakrishnan, Deputy Superintendent of Police, Kancheepuram District and Mr.J.Vinayagam, Inspector of Police, Siva Kanchi Police Station [second respondent] are before this Court. To be noted, we are informed that Mr.G.Venkatakrishnan, Deputy Superintendent of Police, Kancheepuram District, is before this Court on behalf of first respondent as his deputy.

5. Adverting to the earlier proceedings, we are informed by both sides without any disputation or contestation that the arrestee was produced before said Judicial Magistrate i.e., Judicial Magistrate I, Kancheepuram, at 3.55 p.m. (15.55 hrs.) yesterday and arrestee was remanded to judicial custody by said Judicial Magistrate. A Form (Form-



107) captioned 'நிலையத்தை விட்டுச் செல்லும் காவல்

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B4 Baluchetty Chathiram Police Station Cr.No. 543/2015
From Order for the Detention in Custody of an accused person
(Section 167 Cr.P.C.)
M.D. 04/12/23.

The Superintendent,
Sub Jail, Kanchipuram.

Whereas it appears that a charge against செந்திரன் குமாரன்
s/o செந்திரன் குமாரன் of an offence under section
541, 547, 365, 384, 302, 346, 347, 109, 34 IPC of his under
investigation by the police under the provisions of Chapter XII of the code of Criminal
Procedure that such investigation cannot be completed within the period of 24 hours
fixed by section 157 and that there are grounds for believing that the accusation /
information against the said persons is well founded and the accused having been
duly forward to this Court this is to authorize you to detain the
said செந்திரன் குமாரன் in Custody 14
days, and to cause him to be produced before Judicial Magistrate No - I, court
sitting at Kanchipuram on the 03/12/23 at 10.00 AM.

DESCRIPTIVE ROLL

1. Name : செந்திரன் குமாரன்
2. Father's Name : செந்திரன் குமாரன்
3. Sex, Married or Single : ஆண், திருமணம் செய்தவர்
4. Religion and Caste : இந்து, வைணவம்
5. Previous Occupation : உயர்
6. Age : 41
7. Descriptive Marks : (i) உயரம் 5'6", கனம் 70 கிலோ, கைகள் குறுகியவை
(ii) உயரம் 5'6", கனம் 70 கிலோ, கைகள் குறுகியவை
(iii) உயர் கனம் 70 கிலோ, கைகள் குறுகியவை

Given under my hand and the seal of the court this the 27 day of 06 2023



Judicial Magistrate, No-I,
Kanchipuram



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தமிழ்நாடு சிறை மற்றும் சீர்திருத்தப் பணிகள் துறை

அனுப்புனர்
கண்காணிப்பாளர்
கிளைச்சிறை,
காஞ்சிபுரம்

பெறுநர்
சிறைக்கண்காணிப்பாளர்,
மத்திய சிறை,
கோயம்புத்தூர்.

இ.கோ.எண்: 8689 சிறைவாசிகள் கோப்பு/ கிசிகா / நாள். 27/06 / 2023

பொருள் : சிறைகள் - கிளைச்சிறை காஞ்சிபுரம் - விசாரணை சிறைவாசியை
பலத்த வழிக்காவலில் சிறை மாற்றம் செய்தல் - தொடர்பாக.

பார்வை1: B4 பாஸ்செட்டிசத்திரம் Ps,Cr.no-503/2015, JM I KPM
U/s-341,347,365,384,307,346,ipc r/w 109,34 ipch.Ot-03.07.2023

(((((((((((())))))))))

இக்கிளைச்சிறைக்கு நீதித்துறை நடுவர் அவர்கள், நீதித்துறை
நடுவர் நீதிமன்ற எண்-1 காஞ்சிபுரம் அவர்கள் மூலம் பரிந்துரை செய்யப்பட்ட விசாரணை
சிறைவாசி தினேஷ் @ தினேஷ்குமார் த/பெ கார்த்திகேயன் (வயது-41) என்பவர் பல்வேறு
வழக்குகளில் சம்பந்தப்பட்ட தொடர் குற்றவாளி என்பதாலும் காஞ்சிபுரத்தில் உள்ள
முக்கிய ராஜ்யமான மூதூர் என்பவரின் கூட்டாளியான இவருக்கு புழல் மத்திய சிறையில்
எதிரிகள் உள்ளதாலும் இச்சிறைவாசியை இக்கிளைச்சிறையில் தொடர்ந்து வைக்க
இயலாத காரணத்தாலும் புழல் மத்திய சிறை-II, சிறைக்கண்காணிப்பாளர் அவர்களின்
தொலைபேசி உத்தரவுக்கிணங்க இச்சிறைவாசியை பாதுகாப்பு மற்றும் நிர்வாக நலன்
கருதி பலத்த அதே வழிக்காவலுடன் (Strong Escort) நேரடியாக மே தங்கள்
கோயம்புத்தூர் மத்திய சிறைக்கு இன்று 27.06.2023 சிறை மாற்றம் செய்யப்படுகிறார்
எனவே இச்சிறைவாசியை அனுப்பதித்துக்கொள்ளுமாறு பணிவுடன் கேட்டுக்கொள்கிறேன்.

இணைப்பு:

1. விசாரணை சான்றாணை அசல் - 01
2. வருத்துவ சான்று ஆவணங்கள் அசல் - 01

கிளைச்சிறை கண்காணிப்பாளர்,
கிளைச்சிறை காஞ்சிபுரம்

The above speaks for themselves.



6. As regards the earlier proceedings, more particularly, paragraph

16 thereat where we have requisitioned report from the first respondent, on instructions from the aforementioned Deputy Officer of first respondent, learned Prosecutor submits that they have taken recourse to proviso to Section 76 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity] and the reason for delay is security concerns *qua* the arrestee. This Bench is informed that transport of arrestee requires adequate safeguards and safety measures to be put in place. Learned Prosecutor submits that 'gang rivalry' is the cause for concern but we refrain ourselves from expressing any opinion on this gang rivalry aspect as what we are concerned with now is a habeas legal drill. We are satisfied with the reason given in the report and the reason as to why proviso to Section 76 Cr.P.C has been resorted to and this coupled with the scenario that petitioner's anxiety stands doused, we deem it appropriate to drop the curtains on the captioned HCP.

7. We also notice that the apprehension of the petitioner which impelled the petitioner to urgently move the captioned HCP now stands doused as the arrestee has been remanded to judicial custody by a due



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process of law and the arrestee is now lodged in Central Prison, Coimbatore. To be noted, this aspect has been already alluded to supra.

8. Though obvious we make it clear that all the rights and contentions of the petitioner, arrestee, respondents and/or any other person concerned with this matter remain preserved for further connected/collateral proceedings and the same will proceed untrammelled by this order, which has been made for the limited purpose of giving a closure to the habeas legal drill on hand. Therefore, the report requisitioned *vide* paragraph 16 of the earlier proceedings has now become unnecessary.

The sequitur of discussion thus far is, captioned HCP is disposed of as closed.

[M.S., J.]

[R.S.V., J.]

28.06.2023

Index : Yes

Neutral Citation : Yes

gm



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To

- 1.The Superintendent of Police,
Kancheepuram,
Kancheepuram District.
- 2.The Inspector of Police,
B-1, Siva Kanchi Police Station,
Kanchipuram, Kanchipuram District.
- 3.The Public Prosecutor,
High Court, Madras.



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**M.SUNDAR, J.
and
R.SAKTHIVEL, J.**

gm

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28.06.2023