



WEB COPY



H.C.P.No.1879 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1879 of 2023

Sanjay Mondal

...Petitioner/Detenue

VS.

1. The Principal Secretary to Government, (FAC)
Public (Foreigners – III) Department,
Secretariate,
St.George Fort,
Chennai – 600 104.
2. The District Collector cum Camp Officer,
Special Camp for Refugees,
Central Prison Campus,
Tiruchirappalli.
3. The Inspector of Police,
Central Crime Branch,
Vepery,
Chennai.

... Respondents



H.C.P.No.1879 of 2023

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus directing the respondents to produce the body of the detainee, now under the illegal custody of the 2nd respondent and set the detainee at liberty forthwith.

For Petitioner :: Mr.S.Senthil

For Respondents :: Mr. E. Raj Thilak
Additional Public Prosecutor
Assisted by Mr. C. Aravind

ORDER

(Order of the Court was made by **SUNDER MOHAN, J.**)

Habeas Corpus Petition has been filed for a direction to the respondents to produce the body of the detainee now said to be in illegal custody of the second respondent viz. District Collector cum Camp Officer, Special Camp for Refugees, Central Prison Campus, Tiruchirappalli and set him at liberty.

2. The brief facts leading to the filing of the above petition are as follows:-

(a) On 01.01.2020, the third respondent/Inspector of Police, Crime Branch, Vepery, Chennai, had registered an FIR in Crime No.2 of 2020 against the petitioner for the offences under Sections 12 (1A)(a) of the



H.C.P.No.1879 of 2023

Passport Act, 14 of Foreigners Act, 420, 468 and 471 of the Indian Penal Code. He was arrested and remanded to judicial custody on the same day.

(b) It is alleged in the FIR that when the petitioner's passport was scrutinized at the immigration counter, it was found that he had obtained the Indian passport fraudulently; that he was a Bangladeshi National; and that he had obtained PAN Card, Voter ID Card and Ration Card fraudulently.

(c) The petitioner moved a bail application before the learned Judicial Magistrate, Alandur and he was released on bail on 20.01.2020, on the condition that he should report before the third respondent daily at 10.30 a.m.

(d) On 18.02.2020, the first respondent/Principal Secretary to Government (FAC), had passed an order in exercise of the powers under Section 3(2)(e) of the Foreigners Act that the petitioner shall reside in the Special Camp identified and located by the District Collector, Tiruchirapalli and that the petitioner shall not leave the boundaries of the Special Camp except with the prior permission of the District Collector, Tiruchirapalli.



H.C.P.No.1879 of 2023

(e) The petitioner had challenged the aforesaid order of the first respondent dated 18.02.2020 in W.P.No.6050 of 2020, before this Court. The learned Single Judge of this Court without expressing any opinion on the merits of the case had disposed of the said Writ Petition granting liberty to the petitioner to workout his remedy after the disposal of the criminal case pending against him.

(f) The third respondent filed a Final Report before the learned Judicial Magistrate – I, Alandur, in C.C.No.288 of 2021, pursuant to the investigation in Crime No.2 of 2020, for the offences under Section 12 (1A) (a) of the Passport Act.

(g) The petitioner filed Crl.O.P.No.22626 of 2021, before this Court, praying for quashing of the said complaint. This Court by an order dated 27.04.2023, quashed the criminal case in C.C.No. 288 of 2021.

(h) The petitioner thereafter approached the authorities concerned for releasing him from the Special Camp since the case against him had been quashed by this Court. Aggrieved by the fact that the authorities did not



H.C.P.No.1879 of 2023

respond to his representation, the petitioner has filed this petition, alleging that his continued detention after the proceedings against him were quashed, is illegal.

3. Mr.E.Raj Thilak, the learned Additional Public Prosecutor, per contra submitted that the detention of the petitioner in the Special Camp is pursuant to the orders passed by the first respondent and therefore, it cannot be said that the petitioner is in illegal custody. The learned Additional Public Prosecutor relied upon the Judgment of the Divisional Bench of this Court in H.C.P.No.1608 of 2020, in which this Court had observed that an Habeas Corpus Petition would not lie against an order passed by the Government under Section 3(2)(e) of the Foreigners Act, 1946, directing a person to be detained in a Special Camp. The learned Additional Public Prosecutor further submitted that the State has challenged the order passed by this Court in Crl.O.P.No.22626 of 2021 and the Special Leave Petition (Criminal) in Diary No.38906 of 2023 is pending before the Hon'ble Supreme Court.



H.C.P.No.1879 of 2023

WEB COPY

4. The learned counsel for the petitioner, in his reply, submitted that the Hon'ble Supreme Court had not granted stay of the order passed by this Court in CrI.O.P.No.22626 of 2021. The learned counsel further submitted that even in the event of the Hon'ble Supreme Court reversing the order of this Court, the petitioner would be available to face the Trial, and he may be put on stringent conditions to ensure his presence before the Trial Court. The learned counsel also filed an affidavit of the petitioner in which the petitioner had stated that he would not flee from justice and that he would reside in West Bengal within the jurisdiction of the Superintendent of Police, Uttar Dinajpur District, West Bengal.

5. We have carefully considered the rival submissions made by the learned counsel.

6. It is seen that the petitioner has not challenged the order passed by the first respondent detaining him in the Special Refugee Camp. It is the case of the petitioner that since the criminal case against him is quashed, the



H.C.P.No.1879 of 2023

basis for his detention in the Special Camp no longer exists; that the continued detention in Special Camp is illegal; and that therefore, he may be set at liberty.

7. We find that in the order quashing the proceedings against the petitioner, this Court had observed as follows:-

“16. In any case, the petitioner cannot be considered as an illegal migrant within the meaning of the above said statute. Further the petitioner has given the Indian Passport, Pan Card, Voter Card, Aadhar Card for showing his permanent residence at India for several years from 2007. In fact, he has been possessing a valid Indian Passport on 05.05.2012, on which date he was intercepted.

17. The petitioner, who was a Hindu Minority of his country had migrated to India on fear of religious persecution and he was under compelling circumstances to seek shelter in India. Hence, he should not be treated as an illegal migrant. Further, he did not suppress the fact that he belongs to Bangladesh prior to his migration and so there cannot be any suppression of



facts in obtaining Indian Passport by the petitioner. The petitioner has not involved in any criminal offence and maintained good conduct prior and subsequent to the issuance of the passport.”

8. Thus, from the above order, it is clear that the petitioner cannot be considered to be an illegal immigrant. The basis for his detention in the Special Camp (Special Refugee Camp, Trichy) (i.e.) pendency of the criminal case no longer exists. Hence, this Court is of the view that the petitioner cannot be detained in a special camp. Though the order of this Court passed in the quash petition has been challenged before the Hon'ble Supreme Court, the said order has not been stayed by the Hon'ble Supreme Court. However, having regard to the fact that the petitioner should be available to face the Trial in the event of the Hon'ble Supreme Court reversing the order of this Court in Crl.O.P.No.22626 of 2021, we are inclined to pass the following order in the interest of justice.

(a) The petitioner shall be released from the Special Camp for Refugees, Central Prison Campus, Thiruchirappali, forthwith.



H.C.P.No.1879 of 2023

(b) The petitioner shall however appear before the third respondent/Inspector of Police, Central Crime Branch, Vepery, Chennai, on every 1st Monday of the month commencing from 06.11.2023.

(c) The petitioner shall inform his place of residence and his contact numbers to the third respondent before he leaves the jurisdiction of the third respondent. It is reported that the passport of the petitioner has already been seized by the third respondent.

9. Thus, the above H.C.P is ordered accordingly.

(S.S.S.R., J.) (S.M., J.)
30.10.2023

Index : yes / no
Speaking/Non-Speaking Order
Neutral citation : yes/no
dk

Note to Office:
Issue order copy by 02.11.2023.



H.C.P.No.1879 of 2023

WEB COPY to:-

1. The Principal Secretary to Government, (FAC)
Public (Foreigners – III) Department,
Secretariate,
St.George Fort,
Chennai – 600 104.
2. The District Collector cum Camp Officer,
Special Camp for Refugees,
Central Prison Campus,
Tiruchirappalli.
3. The Inspector of Police,
Central Crime Branch,
Vepery,
Chennai.
4. The Public Prosecutor
High Court of Madras,
Chennai – 600 104.



WEB COPY



H.C.P.No.1879 of 2023

**S.S. SUNDAR, J.
AND
SUNDER MOHAN, J.
dk**

H.C.P.No.1879 of 2023

30.10.2023