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W.P.No.32433 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.01.2023

PRONOUNCED ON : 04.01.2023

Coram:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND**

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.32433 of 2022

V. Sekar

..Petitioner

.Vs.

1.The State of Tamil Nadu

Rep. By its Secretary
Department of Home
Fort St.George
Chennai 600 009.

2.The Member Secretary

The State Legal Service Authority
North Fort Road
High Court Campus
Chennai 600 104.

..Respondents



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Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to appoint M/s.R.Sankarasubbu and A.Stephen, Advocates, No.110, Law Chamber, High Court Building, Chennai-600 104, as defense counsel to defend the detinue Chandra, wife of Sundaramurthy, now confined in Central Prison, Trichirapally, concern in Spl.S.C.No.5 of 2003 on the file of Spl. Court under POTA offenses, Poonamallee, Chennai 600056, by considering the representation of the petitioner dated 17.11.2022, on the file of second respondent herein to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

This Writ Petition has been filed by the next friend of Smt. Chandra, w/o. Sundaramurthy for the issue of a Writ of Mandamus, directing the respondents to appoint Mr.R.Sankarasubbu and Mr.A.Stephen as advocates to defend the said Chandra in the case in Special C.C.No.5 of 2003 (Special S.C.No.3 of 2022) pending on the file of the Special Court under the Prevention of Terrorism Act, 2002 (for short 'POTA').

2.The case of the petitioner is that Smt.Chandra, w/o.Sundaramurthy, is arrayed as A-29 in Special C.C.No.5 of 2003 (Special S.C.No.3 of 2022) and that a



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representation was made to the respondents on 17.11.2022, to appoint Mr.R.Sankarasubbu and Mr.A.Stephen as advocates to defend her in the case and since the representation was not acted upon, the present writ petition has been filed, seeking for appropriate directions.

3.Heard Mr.R.Sankarasubbu, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing on behalf of the respondents.

4.The relief sought for in this writ petition looks innocuous, but, on carefully going through the materials available on record, we found that the case in Special C.C.No. 5 of 2003 (Special S.C.No.3 of 2022) has been pending before the Court below for nearly 20 years without any progress. Hence, we called for report from the Special Court Judge, to understand the reason for the enormous delay. It was also brought to our notice that the accused persons in Special C.C.No. 5 of 2003 (Special S.C.No.3 of 2022) had also filed writ petitions seeking for Constitution of a Review Committee to review the continuation of the prosecution of the accused persons for offence under POTA. These batch of writ petitions were taken up for final hearing by this Court and



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all the writ petitions were dismissed by an order dated 16.12.2022 and the following directions were issued:

101. (i) The case before the Special Court has been pending for 19 long years and must be concluded expeditiously, and in any event with a period of 10 months from 02.01.2023.

(ii) The specific request of the petitioners is that they must be provided with legal assistance and the Division Bench of this Court in its order dated 10.12.2008 has found merit in their plea. Though there are rival contentions in regard to whether such assistance has been provided or not, I choose not to delve on the technicalities of the matter and in the interests of a quick resolution of the matter direct the State to provide a list of eligible and available counsel to represent the petitioners in the trial, within 48 hours from date of receipt of a copy of this order.

(iii) The petitioners shall indicate their preference/choice of counsel within another 48 hours from the receipt of the list. If they choose not to indicate their preference within the time frame as set out, they shall be left to their own devices in the manner of appointment of counsel.



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(iv) Trial shall commence on 02.01.2023, shall be conducted on a day to day basis and shall stand concluded within a period of 10 months from that date.

5. On a conspectus of the report given by the judge of the Special Court and the recent order passed by the Special Court on petitions filed under Section 309 of Cr.P.C., by some of the accused persons, dated 01.12.2022 and the order passed in the batch of writ petitions, mentioned supra, we find that the accused persons are intentionally using all dilatory tactics to drag on with the proceedings for the last 20 years.

6. There are 30 accused persons, who are facing trial in Special C.C.No. 5 of 2003 (Special S.C.No.3 of 2022). On going through the order passed by the Special Court in CrI.MP.No.705 of 2022, etc., in Special C.C.No. 5 of 2003 (Special S.C.No.3 of 2022), it can be seen that right from the year 2003, the accused persons have not appeared regularly before the Court below and during every hearing, some of the accused persons have absented themselves and filed petitions under Section 317 of Cr.P.C., to dispense with their appearance. That apart, the accused persons have also been changing their counsels on and off. The accused persons were also not cooperating for making any progress in the case by pointing out to the pending writ petitions before this Court, wherein, they had sought for reviewing their cases by constituting a fresh Committee.



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Even though, no interim orders were passed by this

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Court staying the proceedings pending in Special C.C.No. 5 of 2003 (Special S.C.No.3 of 2022), the accused persons successfully managed to drag on with the proceedings. Ultimately, the Special Court realised that petitions are being filed under Section 309 of Cr.PC., only to further drag on with the proceedings and hence decided to dismiss all the petitions and proceed further with the case. In the above order, it is seen that Chandra (A-29) is represented through counsel from the year 2019 onwards. Mr. R. Sankarasubbu and Mr.K. Diliprāja have filed their memo of appearance as early as on 21.03.2019 itself and they have not withdrawn the memo of appearance till date and in spite of the same, the present writ petition has been filed to appoint Mr.R.Sankarasubbu and Mr.A.Stephen as advocates to represent Chandra (A-29). It is also evident from the order that Mr.A.Stephen also had filed memo of appearance on behalf of Chandra on 09.05.2022. Subsequently, Mr.A.Stephen, has withdrawn the memo of appearance for A-29.

7.It is pellucid that the present writ petition is yet another ploy used by one of the accused person to drag on with the proceedings. It defies common sense as to why Mr.R.Sankarasubbu and Mr.A.Stephen, must be directed to be appointed as defence



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counsels to defend Chandra (A-29), when already the said accused person is

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represented by Mr. R. Sankarasubbu and Mr.K. Dilipraja, by filing memo of appearance on 21.03.2019 itself. We find that the present writ petition is a clear abuse of process of Court and the petitioner, who claims to be the next friend of Chandra (A-29) has instituted this writ petition by concealing material facts. If we had not taken efforts to dig deeper into this case, we would have fallen into the trap laid by the petitioner looking at the innocuous relief sought for in this writ petition.

8.In the upshot of the above discussion, we do not find any merits in this writ petition and we have no doubts in our mind that the present writ petition is only a ruse to further drag on with the proceedings pending in Special C.C.No. 5 of 2003 (Special S.C.No.3 of 2022). In view of the same, this petition deserves to be dismissed on the exemplary costs, but taking into consideration the fact that Chandra is in custody, we do not want to be harsh on the petitioner. Accordingly, this writ petition stands dismissed.

9.We are aware of the fact that when the connected writ petitions were dismissed, certain directions were issued to the Special Court Judge and the same has been



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extracted supra. Apart from the above directions, we issue a further direction to the judge, Special Court to proceed further with the trial in line with Section 309 of Code of Criminal Procedure and the guidelines given by the Apex Court in *Vinod Kumar .v. State of Punjab* reported in **2015 1 MLJ Crl 288**. If the accused persons adopt any further dilatory tactics, it is open to the Court below to insist upon the appearance of those accused persons who have been granted bail and remand them into custody as laid down by the Apex Court in *State of U.P .v. Shambhu Nath Singh* reported in **(JT 2001 (4) SC 319)**.

(P.N.P., J.) (N.A.V., J.)

04.01.2023

Internet : Yes/No

Index : Yes/No

Speaking order /Non-Speaking order

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To

1. Secretary
State of Tamil Nadu
Department of Home
Fort St. George
Chennai 600 009.
2. The Member Secretary
The State Legal Service Authority
North Fort Road
High Court Campus
Chennai 600 104.
3. The Public Prosecutor
High Court, Madras



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P.N.PRAKASH,J.

and

N. ANAND VENKATESH,J.

kp

**Order in
W.P.No.32433 of 2022**

04.01.2023