



W.P.No.73 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2023

CORAM:

**THE HONOURABLE Mr.JUSTICE M.SUNDAR
and
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR**

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V.Sekar, 54 years
S/o.Vanji

... Petitioner

-Vs-

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Home,
Fort St.George,
Chennai – 600 009.

2.The Deputy Superintendent of Police,
'Q' Branch Police Station,
Dharmapuri,
Dharmapuri District.

3.The Superintendent of Central Prison,
Special Women Prison,
Trichy District,
Trichy.

... Respondents



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PRAYER :

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to consider the representation of the petitioner dated 21.12.2022 on the file of the respondents herein.

For Petitioner : Mr.R.Sankarasubbu
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

Captioned writ petition pertains to detenue Ms.Chandra, W/o.Sundaramurthy now confined in Central Prison for Women, Tiruchirapalli as under trial vide Spl.C.C.No.5 of 2003 [CNR No.TNCH 06 000237-2022] on the file of Special Court under 'The Prevention of Terrorism Act (POTA), 2002 [Sessions Court for Exclusive Trial of Bomb Blast Cases]' {hereinafter 'Trial Court' for the sake of convenience and clarity}.



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2.To be noted, alleged offences are under Sections 3(3), 3(5), 4(b), 22(1) of 'the Prevention of Terrorism Act, 2002 [Act 15 of 2002]' {hereinafter 'POTA' for the sake of brevity and convenience}.

3.A friend of the detinue, one Mr.Sekar, S/o.Vanji, aged about 54 years has sent a 'representation dated 21.12.2022' [hereinafter 'said representation' for the sake of convenience and clarity] to the Home Secretary, Deputy Superintendent of Police [Q Branch CID] and The Superintendent of Prison, Central Prison, Tiruchirapalli *inter alia* alleging that the prolonged custody of Ms.Chandra, wife of Sundaramurthy is illegal and violative of Article 21 of the Constitution of India. Captioned writ petition has been filed for mandamus praying alleged inaction and seeking direction for disposal of the said representation.

4.Be that as it may, a regular Criminal Appeal being CrI.A.No.964 of 2022 has been preferred by Ms.Chandra assailing an order dated 18.07.2022 made in CrI.M.P.No.235 of 2022 wherein her application for bail under Section 439 of 'the Code of Criminal Procedure, 1973 [Act 2 of 1974]' {'Cr.P.C' for the sake of convenience and brevity} was negatived by



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the Trial Court. To be noted, this is a statutory appeal under Section 34 of the erstwhile POTA. Sub section (2) of Section 34 of POTA makes it clear that such an appeal has to be heard by a bench of two judges of the High Court. Therefore, there is no difficulty in Criminal Appeal No.964 of 2022 being listed before this bench by the Registry in accordance with the portfolio allocation (made by Hon'ble Acting Chief Justice as master of the roster) which is now operating as the same reads as follows:

'Habeas Corpus Petitions;

All Criminal Appeals and other Criminal Cases to be heard by Division Bench (including crime against women and children); Criminal Contempt and Appeals relating to orders in Contempt Proceedings;

All Division Bench matters, including Criminal Appeals and Writ Petitions, relating to criminal cases involving the sitting or former M.Ps and M.L.As (including those cases filed before the Madurai Bench)'

However as regards captioned writ petition, portfolio allocation to another Hon'ble Single Judge needs to be looked at as the same reads as follows:

'Criminal Original Petitions (under Sections 407 and 482



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Cr.P.C.), Writ Petitions (Cr.P.C.) - from the year 2022;

All Single Bench matters including Criminal Appeals and Writ Petitions relating to Criminal cases involving the sitting or former M.Ps and M.L.As (including those cases filed before the Madurai Bench)'

5.However, when the captioned writ petition was listed before us on 25.01.2023, we were informed that the captioned writ petition has to be heard by a Division Bench and therefore, the following order was made:

'The nucleus of the captioned writ petition is a representation dated 21.12.2022 sent by one Mr.V.Sekar [son of Mr.M.Vanji] and friend of Ms.Chandra [wife of Mr.Sundaramoorthy], aged 50 years now [hereinafter referred as 'detenu' for the sake of convenience and clarity].

2.Mr.R.Sankarasubbu, learned counsel for writ petitioner who is before this Court submits that the detenu was arrested on 16.07.2016 from Karur and remanded to judicial custody for alleged offences interalia under The Prevention of Terrorism Act, 2002 (15 of 2002) [hereinafter referred as 'POTA Act' for the sake of brevity].

3.The grievance of the writ petitioner is that the detenu is languishing in prison without trial.

4.Mr.Muniyapparaj, learned Additional Public



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Prosecutor, who accepted notice on behalf of all the three respondents submitted that the writ petitioner is one of the accused [A29] in what is now Special S.C.No.3 of 2022 on the file of the Special Court for POTA Offence, Poonamallee, Chennai. The learned Additional Public Prosecutor also submits that the detenu had moved a bail application before the Special Court/Trial Court, the same was dismissed and the detenu has carried it to this Court by way of an appeal vide C.A.No.964 of 2022 under Section 34 of POTA Act. To be noted, today the learned Additional Public Prosecutor has filed a counter affidavit in the captioned writ petition. Learned counsel for writ petitioner confirms this position and submits that appeal is pending.

5.Tag C.A.No.964 of 2022 with the captioned writ petition and list both matters one week hence. List on 01.02.2023.'

6.Today, learned Additional Public Prosecutor brought to our notice two circulars regarding listing of writ petitions before Division Bench. Both the circulars are dated 02.03.2021, one bearing reference ROC.No.16624-A/2021/F1 and another bearing reference ROC No.18136-A/2021/F1. A scanned reproduction of the two circulars are as follows:



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R.O.C.No.16624-A/2021/F1



P.Dis.No.15/2021

CIRCULAR

Sub: Certain directions issued by the Hon'ble Division Bench of High Court of Madras, in H.C.P.No.52 of 2021, dated 22.01.2021 – Instructions issued – Reg.

Ref: Orders passed by the Hon'ble Division Bench of High Court of Madras in H.C.P.No.52 of 2021, dated 22.01.2021.

The Hon'ble Division Bench of High Court, Madras, while disposing of H.C.P.No.52 of 2021, dated 22.01.2021, have dealt with the issue relating to transfer of a convict prisoner from one prison to another prison and ultimately held that, in the light of the law laid down by the Hon'ble Supreme Court in *The Home Secretary (Prison) and Others Vs. H.Nilofer Nisha (2020-1-L.W.(Crl.)612)*, the present Habeas Corpus Petition for such a relief cannot be maintained. The Hon'ble Court also noticed that such Habeas Corpus Petitions are frequently filed before this Court and they have to be treated as Writ Petitions and posted before the Division Bench for Orders, since the custody of the prisoner is not *per se* illegal and is pursuant to an order of conviction and sentence by a competent Court.

Circular to all HC

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In view of the above, it is hereby directed that, all the Officers/Officials concerned, shall number the petitions seeking to transfer a convict prisoner from one prison to another prison as Writ Petitions and post them before the Hon'ble Division Bench dealing with Criminal Side matters for Orders.

The above instructions shall be adhered scrupulously, without any deviation.

High Court, Madras.
Dated: 02.03.2021


REGISTRAR GENERAL

To:

1. All the Registrars, High Court, Madras and Madurai Bench of Madras High Court, Madurai.
2. All the Joint Registrar / Deputy Registrar, High Court, Madras and Madurai Bench of Madras High Court, Madurai (with a direction to communicate the circular to all the Appeal Examiners and all concerned).
3. The Section Officer, "F" Section, Madurai Bench of Madras High Court, Madurai.
4. The Record Keeper, A.D. Records, High Court, Madras and Madurai Bench of Madras High Court, Madurai.



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R.O.C.No.18136-A/2021/F1



P.Dis.No.16/2021

CIRCULAR

Sub: Certain directions issued by the Hon'ble Division Bench of High Court of Madras, in H.C.P.Nos.2097 of 2020 etc. batch - Instructions issued - Reg.

Ref: Orders passed by the Hon'ble Division Bench of High Court of Madras in H.C.P.Nos.2097 of 2020 etc. batch, dated 21.01.2021.

The Hon'ble Division Bench of High Court, Madras, while dismissing H.C.P.Nos.2097 of 2020 etc batch, vide Order dated 21.01.2021, had observed that the continued numbering of Habeas Corpus Petitions by the Registry, seeking ordinary or emergency leave to the convict prisoner, is seriously misconceived as it does not involve any unlawful detention at all.

In view of the above, it is hereby directed that, all the Officers/Officials concerned, shall number the petitions seeking to leave or parole to the Convict Prisoners as Writ Petitions and post them before the Hon'ble Division Bench dealing with Criminal Side matters for Orders

The above instructions shall be adhered scrupulously, without any deviation.

High Court, Madras.
Dated: 02.03.2021


REGISTRAR GENERAL



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7.A careful perusal of the aforementioned circulars bring to light that (a) writ petitions pertaining to Transfer of convict prisoners from one prison to another prison (b) writ petitions pertaining to leave/parole of convict prisoners, are to be listed before Division Bench. Therefore, the question now is whether the captioned writ petition has to be listed before this bench.

8.Learned counsel for the petitioner Mr.R.Sankarasubbu points out that the captioned Criminal Appeal and Writ Petition have to necessarily be heard together owing to the two being dovetailed and inextricably intertwined. Further, learned counsel placed reliance on *Sunil Batra I & II case laws* i.e., **1979 Supreme Court Cases (Cri) 155** and **1980 Supreme Court Cases (Cri) 777** and submitted that all writ petitions which pertain to cause of prisoners irrespective of whether they are under trial detainees or convict prisoners have to be heard by Division Bench.

9.Learned counsel also drew our attention to Madras High Court Writ Rules, 2021 and submits that vide Rule 17(1)(ii), Habeas Corpus Writ Petitions have to be listed before a Division Bench and captioned writ



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petition is also in the nature of Habeas Corpus as it pertains to a complaint of illegal detention/custody and infraction of Constitutional philosophy/safeguard ingrained in Article 21 of the Constitution of India.

We therefore make the following order:

Paragraph 5 of the aforementioned proceedings dated 25.01.2023 which reads as '*Tag C.A.No.964 of 2022 with the captioned writ petition and list both matters one week hence. List on 01.02.2023*' is now recalled.

10.In the light of the aforementioned recall, we were of the view that Registry has to place the captioned writ petition case file along with case file in Crl.A.No.964 of 2022 together with instant proceedings made by us before Hon'ble Acting Chief Justice and seek suitable orders.

11.At this juncture, learned counsel for the writ petitioner submitted that he may be permitted to withdraw the captioned writ petition preserving his rights and contentions for being canvassed in the Criminal Appeal to the extent the legal perimeter of the appeal would permit him. Learned counsel for the petitioner saying so, made an endorsement in the case file



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and a scanned reproduction of the same is as follows:

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debar
RE file may be permitted
to MUKESH K. MURUGAN,
URGENT to grounds in
CA NO 964/2022
6/3/2023

Learned counsel also reiterates the aforementioned endorsement in the hearing.



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12. In the light of the narrative thus far and the endorsement made by learned counsel for the writ petitioner, captioned writ petition is disposed of as withdrawn/closed albeit preserving the rights and contentions of the petitioner/appellant in Criminal Appeal No.964 of 2022 in the aforesaid manner. There shall be no order as to costs.

[M.S.J] [M.N.K.J]

06.03.2023

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

Internet : Yes/No

Index : Yes/No

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To

1. The Secretary,
Department of Home,
The State of Tamil Nadu,
Fort St. George,
Chennai – 600 009.
2. The Deputy Superintendent of Police,
'Q' Branch Police Station,
Dharmapuri,
Dharmapuri District.
3. The Superintendent of Central Prison,
Special Women Prison,
Trichy District,
Trichy.



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M.SUNDAR, J.
and
M.NIRMAL KUMAR, J.

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Dated : 06.03.2023