



W.P(MD)No.17936 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2023

CORAM :

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

W.P(MD)No.17936 of 2023

P.Solaiammal

... Petitioner

vs.

1. The Director General of Prisons/
Departmental of Prison and
Correctional Services,
Chennai.

2.The Superintendent,
Central Prison, Cuddalore.

3.The Superintendent,
Central Prison, Madurai.

4.The Commissioner of Police,
Madurai City, Madurai.

5.The Superintendent of Prison,
Trichy.

[R4 & R5 are *suo motu* impleaded]

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the impugned order of the first respondent in Mu.Mu.No.9910/C.Na.2/2023



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dated 21.04.2023 and quash the same as illegal and consequently direct the first respondent to transfer the petitioner's son namely Saba @ Sabarathnam, S/o.Pandi / remand prisoner from the second respondent to third respondent or any other nearby prisons at Madurai within a stipulated time as may be fixed by this Court.

For Petitioner	: Mr.M.Jegadeesh Pandian
For Respondents	: Mr.A.Thiruvadi Kumar Additional Public Prosecutor

ORDER

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

This order will now dispose of the captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity).

2.Captioned WP has been filed in this Court on 21.07.2023 *inter-alia* assailing 'an order dated 21.04.2023 bearing reference Mu.Mu.No. 9910/C.Na.2/2023' made by the first respondent (hereinafter 'impugned order' for the sake of brevity).

3.Short facts are that the 'WP petitioner's son one Saba @ Sabarathnam' is a remand prisoner, who is now lodged in Central Prison, Cuddalore; that 'WP petitioner's son' shall be referred to as 'said prison



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inmate' for the sake of convenience and clarity); that said prison inmate was originally lodged in Central Prison, Coimbatore; that thereafter said prison inmate was transferred to Cuddalore Central Prison; that WP petitioner in and by 'a petition/representation dated 24.03.2023' (hereinafter 'said representation' for the sake of brevity) sought transfer of said prison inmate from Cuddalore Central Prison to Madurai Central Prison *inter-alia* on the ground that her interview rights are being affected; that said representation came to be rejected in and by the impugned order; that assailing the impugned order (Certiorari limb) and praying for transfer of said prison inmate from Central Prison, Cuddalore to Central Prison, Madurai (Mandamus limb), captioned WP has been filed in this Court.

4.Hon'ble Predecessor Bench issued notice; that post notice, a counter-affidavit dated 04.08.2023 from the third respondent and a status report dated 26.09.2023 from the fourth respondent have been filed by learned Prosecutor.

5.Adverting to the aforementioned counter-affidavit and status report, learned Prosecutor submitted, on instructions, that it is not desirable to transfer the said prison inmate to Madurai Central Prison



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owing to certain threat perceptions both by and to him. However, the impugned order does not elaborate on this aspect of the matter. Learned counsel for WP petitioner drew our attention to a judicial order dated 02.12.2022 made by Hon'ble Single Judge in CrI.O.P(MD) No.20984 of 2022.

6.Paragraph Nos.5 and 6 of this judicial order read as follows:

“5.To proceed with the trial in S.C.No.424 of 2019 pending on the file of the learned I Additional District Judge, Madurai, the third accused, Saba @ Sabarathinam and the fourth accused, Dyno Kumar @ Kumaran had to be necessarily confined in a Prison nearer to Madurai. If they are to be confined in Central Prison Madurai or any other sub jail available in Madurai, they can be brought to the Court without much delay. Considering the right of defence, which is a constitutional guaranteed right to the accused and considering the principles of fair trial and speedy trial, particularly when the accused is in prison, the trial has to be conducted earlier.

6.Accordingly, the Director General of Prisons is directed to consider the possibility of keeping the prisoners, Saba @ Sabarathinam and Dyno Kumar @ Kumaran in any of the prisons nearer to Madurai, so that they can be produced without much delay to enable the learned Sessions Judge to proceed with the trial without delay. If they are confined in the prison in Vellore as well



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as Coimbatore, it will cause delay in transporting the third accused, Saba @ Sabarathinam, who is confined in Central Prison, Coimbatore and the fourth accused, Dyno Kumar @ Kumaran, who is confined in Central Prison, Vellore, which is far away from Madurai. Therefore, till the case in S.C.No.424 of 2019 is disposed of, the Director General of Prisons is directed to pass appropriate orders.”

7.To be noted, aforementioned judicial order was made at the instance of Mr.Karthick, a co-accused of one of the accused qua said prison inmate wherein, Mr.Karthick had sought speedy trial i.e., day to day trial in S.C.No.424 of 2019 on the file of I Additional District Sessions Court, Madurai.

8.Learned counsel for WP petitioner also drew our attention to another judicial order, namely, order dated 16.09.2022 made in W.P(MD) No.21906 of 2022 by another Hon'ble Division Bench wherein, one Sekar son of Mari, a co-accused qua said prison inmate in S.C.No.562 of 2018 (CBCID, Madurai) on the file of learned IV Additional District Judge Court, Madurai, was transferred from Central Prison, Cuddalore to Central Prison, Trichy. Learned counsel for WP petitioner submits that transfer of said prison inmate to Central Prison, Trichy would also serve the purpose to an extent considering that the WP petitioner is based in



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Madurai.

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9.In the light of the narrative and what unfold in the hearing today, we deem it appropriate to set aside the impugned order for the purpose of enabling the first respondent to consider the said representation (i.e., 24.03.2023) afresh in the light of the aforementioned two judicial orders and make orders afresh. To be noted, this approach is owing to the fact that this Court is informed that the aforementioned two judicial orders were not brought to the notice of the first respondent before the impugned order made.

10.The first respondent is directed to consider said representation (representation dated 24.03.2023) afresh *de novo* going to the matter, in the light of aforementioned two judicial orders and pass orders afresh as expeditiously as his business would permit but in any event within three weeks from today i.e., by 22.12.2023. The *de novo* order made by the first respondent shall be communicated to the said prison inmate forthwith and to the WP petitioner within five working days under due acknowledgment.

11.Captioned WP is disposed of in the aforesaid manner. There



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shall be no order as to costs.

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(M.S., J.) (R.S.V., J.)
01.12.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
PKN

To

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Correctional Services,
Chennai.
2. The Superintendent,
Central Prison, Cuddalore.
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Central Prison, Madurai.
4. The Commissioner of Police,
Madurai City, Madurai.
5. The Superintendent of Prison,
Trichy.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

PKN

ORDER MADE IN
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01.12.2023