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H.C.P.No.458 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.458 of 2024

A. Sangeetha

...Petitioner

Vs.

1. The Principal Secretary to the Government
Government of Tamilnadu
Department of Home Secretariat
Chennai.

2. The Director General of Police,
O/o. Director General of Prison,
Whannals Road, Egmore, Chennai.

3. The Superintendent of Prison,
Central Prison-II, Puzhal, Chennai

4. Mr. Thirumalai
Jailor-Central Prison-II
Central Prison-Puzhal, Chennai.

5. Mr. Kannan
Special Team
Central Prison, Puzhal, Chennai.

...Respondents.



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Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, directing the 3rd respondent to produce the body or person of under trial prisoners, namely, 1. Gamage Nishant (RP-64455) S/o. Seerisena Gamage, 2. Varnakula Surya Lakshman Kumar Fernando (RP-64456) S/o. Anthoni Fernando, 3. Mr. Kurukula Surya Nilank Samera Peeris (RP-64459) S/o. Nimal Linal Peris before this Hon'ble Court and direct the 3rd respondent to provide the adequate treatment to the said under trial prisoners and remove them from solitary confinement and transfer to High Security Block -1 . Further direct the 2nd respondent to take appropriate action against the respondent No.4 to 5 in pursuant to the petitioner representation dated 21.02.2024.

For Petitioner : Mr.P.Muthamizh Selvakumar

For Respondents : Mr.A. Gokulakrishnan
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

The grievance of the petitioner herein is that the Prison Authorities have used excessive force on some of the named under trial prisoners, who are Srilankan Nationals arrested by the NCB/MDS Madurai in C.C.No.370/21 and are confined in the same block in which the petitioner's husband was confined, owing to which, they have sustained bodily injuries



H.C.P.No.458 of 2024

and hence, she seeks for medical attention to them and to remove them from the solitary confinement.

2. According to the learned counsel appearing on behalf of the petitioner, these prisoners have been kept under solitary confinement and apart from their Advocate, they were not permitted to meet their relatives. Since the injuries caused to the prisoners are severe, he seeks for immediate medical treatment to them.

3. Per contra, the learned Additional Public Prosecutor produced a copy of the Medical Report of the Civil Assistant Surgeon, Central Prison Hospital, Central Prison – II, Puzhal, Chennai, dated 08.02.2024, of one of the prisoner, namely Pushparaj (RP.No.92529/2022), which evidences that there were no external or internal injuries in the body of the prisoner and that his vitals are stable and in good condition. He further submitted that no excessive force was employed on the body of the prisoners and that when a surprise inspection was conducted in the prison cells, several mobile phones with sim cards, chargers, etc., were recovered. Based on such recovery, the



H.C.P.No.458 of 2024

Jailer had preferred a complaint to the Sub-Inspector of Police, Puzhal Police Station, which was registered in Crime No.66/2024 under Section 42 of the Prisons Act, 1894.

4. The facts, as put forth by the petitioner, have been denied by the respondents. While the Prison Authorities claimed that owing to the seizure of the mobile phones, sim cards, etc., from the prison cells, a complaint has been given and no physical force was used on them, the petitioner's claim that her Advocate had witnessed the prisoners in the prison and had seen the injuries.

5. This Court, exercising its powers under Article 226 of the Constitution of India, will not venture to adjudicate such disputed facts. However, the Court will not also be a mute spectator when certain allegations are made of excessive physical force being used on prisoners. In order to strike a balance and safeguard the rights of the prisoners, we are of the view that the prisoners named in the present petition can be referred to the Civil Assistant Surgeon, attached to the Central Prison Hospital, Central



H.C.P.No.458 of 2024

Prison – II, Puzhal, Chennai, with a direction to send a copy of the medical report to the petitioner also.

6. There is yet another aspect in the matter, which may require to be addressed. Under Rule 300 of the Tamil Nadu Prison Rules, 1983, when the Superintendent of Prisons is of the opinion that some of the offences under the Indian Penal Code (IPC) mentioned therein are established against any prisoner, he is required to refer the case to the Magistrate exercising jurisdiction for enquiry in accordance with the procedures contemplated under the Code of Criminal Procedure. But, in cases, when the Superintendent is of the view that when a prisoner has committed any act that would constitute a prison offence and an offence under the IPC, he is entitled to exercise his discretion to either use his own powers of punishment prescribed under Chapter-XVIII or in the alternate to move the Magistrate possessing jurisdiction to enquire into it in accordance with the Code of Criminal Procedure.

7. In the instant case, the Superintendent has exercised his discretion



H.C.P.No.458 of 2024

to prefer a complaint before the jurisdictional Police, which has been registered in Crime No.66/2024, dated 04.02.2024 by the Sub-Inspector of Police, Puzhal Police Station. Having opted to give the complaint, he had foregone his discretion of exercising his powers of punishment under the Prison Rules. If that be so, the prisoners, who are the subject matter in the petition, cannot be deprived of any of the privileges to which they are entitled to under the Prison Rules. Likewise, the Prison Authorities cannot now impose any punishment against the prisoners in connection with the incident, which is the subject matter of Crime No.66/2024. In case any of the privileges have been deprived to the prisoners for their alleged involvement in connection with Crime No.66/2024, the same shall be restored forthwith.

8. In the light of the above findings, there shall be a direction to the Superintendent of Prisons, Central Prison – II, Puzhal, Chennai, to subject the prisoners, to the Civil Assistant Surgeon, Central Prison Hospital, Central Prison – II, Puzhal, Chennai, forthwith. In case any medical aid is required to the prisoners, after examination, the Hospital shall extend the



H.C.P.No.458 of 2024

required medical aid. Likewise, all privileges, to which the prisoners are entitled to under the Prison Rules, shall also be extended to them forthwith.

With these directions, the Habeas Corpus Petition stands closed.

[M.S.R., J] [S.M., J]
01.03.2024

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Index : Yes / No

Neutral Citation : Yes / No

To

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Government of Tamilnadu
Department of Home Secretariat
Chennai.
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O/o. Director General of Prison,
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6. The Public Prosecutor,
High Court, Madras.



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