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HCP.No.367 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.367 of 2023

M.Munirathinam

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep.by its Secretary,
Home Department,
Fort St.George, Chennai 600 009.
2. The Director General of Police,
Tamil Nadu Circle,
Mylapore, Chennai 600 004.
3. The Commissioner of Police,
Coimbatore City,
Coimbatore.
4. The Inspector of Police,
Race Course Police Station,
Coimbatore, Coimbatore District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a
Writ of Habeas Corpus, directing the respondents to produce the detainee Sanjay



HCP.No.367 of 2023

Raja, Age 31, S/o.Manickam before this Court and hold an enquiry into circumstances leading to bullet injuries on his body and Police excesseries torture and other inhuman acts inflicted on his body and mind by the fourth respondent and his men during police custody to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

This petition has been instituted to direct the respondents to produce the detainee Mr.Sanjay Raja S/o.Manickam before this Court and hold an enquiry into circumstances leading to bullet injuries on his body and police excessive and inhuman acts inflicted on his body and mind of the detainee.

2.Mr.R.Sankarasubbu, the learned counsel for the petitioner would mainly contend that, the petitioner is the friend of the detainee Mr.Sanjay Raja. The allegation against the respondents are that, when the detainee was under the police custody, he was taken to an unknown place and police fired and caused bullet injuries to the detainee. He escaped from death and under those circumstances, the



HCP.No.367 of 2023

learned Judicial Magistrate No.III, Coimbatore, in order dated 03.03.2023, in

Crl.M.P.No.9257/2023, directed the Inspector of Police, C2 Race Course (Crime)

Police Station, Coimbatore City, to give proper food to the detenue. Further the Judicial Magistrate directed the police, not to harass the accused in anyway physically or mentally in the name of obtaining confession. The accused even at that point of time had sustained injury in his left hand thumb treated and covered with bandage. Mr.R.Sankarasubbu contended that inspite of the directions issued by the learned Judicial Magistrate, the police made an attempt to shoot the detenue dead, which raised an apprehension in the mind of the detenue that there is no safety and security for him in the hands of the police. Thus, the present Habeas Corpus Petition has been instituted through the friend of the detenue.

3.The learned counsel for the petitioner would rely on the the judgment in ***Sunil Batra Vs. Delhi Administration reported in 1980 AIR 1579*** and submitted that the Writ Habeas Corpus Petition is entertainable, in such circumstances for the purpose of conducting an enquiry with reference to the illegal and excessive acts of the police authorities.



4.The inspector of Police, the fourth respondent herein filed a counter affidavit narrating the incident occurred, which resulted in fire. Paragraph No.4 of the counter affidavit is relevant, which reads as follows:

On 06.03.2023, at 4.30P.M, the accused Sanjairaja gave another confession statement to me, in which he had stated that, he had concealed a live cartridge at the house of his father situated at door no.47, Velmurugan Street, Vinayagapuram, Saravanampatti and a short gun at Karattumedu. His confession statement was recorded by me in the presence of the said Tr.Lakshminarayanan and Tr.Ganeshraja. Thereupon along with the accused I went to his father's house and seized a live cartridge under a recovery mahazar at 7.45 P.M, attested by Tr. Lakshminarayanan and Tr.Ganeshraja. The accused Sanjairajawas in lockup in Race Course Police Station on the night of 06.03.2023. Thereafter, I left Race Course Police Station at about 5.30 A.M on 07.03.2023 in Police Bolero Van with registration no TN 66 G 0167 with my party consisting of SI of Police Tr. Chandrasekar, SI of Police Tr.Chandramoorthy, SSI of Police, Tr.Anandhakumar and others. When



we reached a place by the side of D.O.B.B.S School compound situated at Karattumedu, Saravanampatti, Coimbatore City, Tr.Lakshminarayanan and Tr. Ganesh Prabu also joined us as witnesses. Sanjairaja took out a country made revolver in a polythene cover which had already been concealed under a stone, and fired a round against me with the said revolver, but I escaped by hiding by the side of a tree. When we attempted to catch hold of him, he fired yet another round with therevolver and once again I escaped by hiding by the side of the same tree. Both the rounds fired by Sanjairaja hit the said tree. But Sanjairaja once again aimed to shoot us with the revolver. At that time, in order to protect himself and all of us Tr. Chandrasekar, SI of police Race course Investigation Wing fired a round with the help of 9mm Pistol on the left knee of Sanjairaja. Sanjairaja sustained bullet injury on his left knee, dropped the revolver and fell down. I took Sanjairaja in my Bolero jeep and admitted him in the CMC hospital at 07.10 AM for treatment. After the medical treatment his remand



HCP.No.367 of 2023

was extended from 07.03.2023 up to 21.03.2023 on my requisition. He was discharged from Coimbatore Medical College Hospital, Coimbatore on 15.03.2023 and now he is lodged in Central Prison in the Cuddalore as a remand prisoner. At this stage the petitioner Tr. Munirathinam has filed the present Writ of Habeas Corpus.

5.The learned Additional Public Prosecutor would submit that the circumstances warranted an urgent action, which cannot be termed as an illegal act. For self defence, the police acted strictly and therefore, the actions are bonafide and not with an intention to cause injury or to kill the detainee. The narration of facts would be sufficient to ensure that there was no attempt to kill the detainee, but to protect the officials from the hands of the detainee, who had taken a gun surprisingly from the recovery place and made an attempt to attack the police.

6.Regarding the scope of Habeas Corpus Petition, no doubt, the Hon'ble Supreme Court in ***Sunil Batra Vs. Delhi Administration*** case held that a Habeas Corpus Petition to conduct an enquiry is entertainable. It is relevant to look into the ratio laid down by the Apex Court in the case of ***Kanu Sanyal Vs. District***



Magistrate, Darjeeling, reported in (1973) 2 SCC 674, wherein, the following observations are made.

22. In Kanu Sanyal v. District Magistrate, Darjeeling, this Court while dealing with the writ of habeas corpus has held as follows:

"4. It will be seen from this brief history of the writ of habeas corpus that it is essentially a procedural writ. It deals with the machinery of Justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty...."

23. In Manubhai Ratilal Patel v. State of Gujarat and others, an order of remand was challenged before this Court. After referring to a large number of judgments, which we are not referring in detail since they have all been considered in this judgment, this Court held as follows:

"31....It is well-accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely



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HCP.No.367 of 2023

mechanical manner or wholly illegal...."

24. In Saurabh Kumar v. Jailor, Koneila Jail, this Court came to the conclusion that the petitioner was in judicial custody by virtue of an order passed by the judicial magistrate and, hence, could not be said to be in illegal detention. Justice T.S. Thakur, as he then was, in his concurring judgment held as follows:

"22. The only question with which we are concerned within the above backdrop is whether the petitioner can be said to be in the unlawful custody. Our answer to that question is in the negative. The record which we have carefully perused shows that the petitioner is an accused facing prosecution for the offences, cognizance whereof has already been taken by the competent court. He is presently in custody pursuant to the order of remand made by the said Court. A writ of habeas corpus is, in the circumstances, totally misplaced..."

25. The same view has been taken in the State of Maharashtra and Others v. Tasneem Rizwan Siddiquee wherein it was observed that no writ of habeas corpus could be issued when the detenu was in detention pursuant to an order

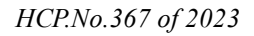


HCP.No.367 of 2023

passed by the Court. As far as the present cases are concerned, it is not disputed that the detenues are behind bars pursuant to conviction and sentence imposed upon them by a court of competent jurisdiction and confirmed by this Court, whereby they were sentenced to undergo imprisonment for life.

7. In the present case, the learned Additional Public Prosecutor would submit that the charge sheet has already been filed and police authorities have not proposed to take the detinue under police custody. Trial has to be commenced. In these circumstances, the Writ Habeas Corpus Petition is not entertainable.

8. It is relevant to consider that in such circumstances, if any police excessiveness or illegal acts are found, the aggrieved persons may approach the Human Rights Commission under the Protection of Human Rights Act, 1993. Section 12 of the Act provides the functions of the Commission. Section 18 contemplates steps during and after enquiry. When comprehensive provisions are available in special enactments to redress the grievances of the aggrieved persons, Writ Court cannot conduct a roving enquiry for the purpose of ascertaining the facts and circumstances warranted an urgent action by the police authorities on



9. That being the factum, the detenue is at liberty to approach the competent forum. However, at present, the detenue is lodged at Central Prison, Cuddalore and the police authorities have not proposed to take the detenue for custody anymore in connection with the criminal case registered. That being the factum, the relief as such sought for requires no further consideration and the Habeas Corpus Petition stands **disposed of**.

08.08.2024

Index : Yes/No
Speaking Order : Yes/No



HCP.No.367 of 2023

Neutral Citation : Yes/No

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