



H.C.P.(MD)Nos.1624 to 1630 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2024

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
The HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

H.C.P.(MD)Nos.1624 to 1630 of 2023

H.C.P.(MD)No.1624 of 2023:

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... Petitioner /
Mother of Detenu

vs.

- 1) The Superintendent of Central Jail,
Trichy Central Prison,
Trichy.
- 2) The Superintendent of Police,
Nagapattinam District,
Nagapattinam.
- 3) The Inspector of Police,
Keelaiyur Police Station,
Nagapattinam District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, directing the respondents herein to produce the petitioner's son namely Veera Murasu s/o Rajamanickam, aged about 29



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years, now confined at Central Prison, Trichy as a remand prisoner before this Court.

For Petitioner : Mr.Jameel Arasu. B

For Respondents : Mr.R.M.Sethuraman,
Additional Public Prosecutor

COMMON ORDER

J. NISHA BANU, J.

and K.K.RAMAKRISHNAN, J.

As the issue involved in these Habeas Corpus Petitions, is one and the same, all petitions are taken up together for disposal and this common order is passed.

2. The petitioner herein, is the mother of the detenu namely Veera Murasu, who is confined at Central Prison, Trichy along with 7 other persons in connection with the case in Crime No.275/2023 under Sections 8(C) 20(b) III)(c) 29(1) & 25 of NDPS Act 1985 for an alleged offence that took place on 08.11.2023 on the file of the third respondent police. Upon registering of the above case, the accused persons were produced before the learned District cum Judicial Magistrate, Keelvelur on 09.11.2023 and they were remanded to



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judicial custody till 23.11.2023. It is the specific contention made by the learned counsel for the petitioner that the third respondent failed to produce all the arrested persons on 23.11.2023. Instead of producing the accused persons before the concerned Court for remand extension, they have been confined at Central Prison, Trichy without any authorisation and they have been kept in judicial custody beyond the 15 days remand period.

3. While so, on 29.11.2023 the accused persons were produced before the Additional District Sessions Judge (NDPS)Act, Thanjavur for remand extension. The learned Judge declined to entertain the same. Again on 30.11.2023, the third respondent police produced the accused persons before the learned Judge and that time, the Court accepted the request for remand extension sought for by the respondent police.

4. The main grievance of the petitioner is that only with a view to ratify the illegal detention of the accused persons, the third respondent police has sought for remand extension, after 7 days of illegal custody and there is no explanation for the above said illegal custody. Aggrieved against the same, the petitioner has preferred the present petition.



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5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. Perusal of records would show that the Additional District Sessions Judge (NDPS)Act, Thanjavur by relying upon the judgment made in ***Kurra Dasaratha Ramaiah and others vs. State of Andhra Pradesh*** dated 04.02.1992, has ordered remand extension. The relevant portion of the said judgment is extracted as under:-

“ it is always open to either the prosecuting agency or the jail authority to put forward a plea of impossibility of production of an accused person before the learned Magistrate and if the learned Magistrate is satisfied that the plea is well founded, he may, for special reasons to be recorded in writing, extend the remand of the accused person even without his production. We, however, hasten to add that non-availability of escorts for non-production of the accused person hardly constitutes a ground for infraction of the mandatory requirement of Section 167(2)(b) of the Code of Criminal Procedure”.

7. Moreover, the Hon'ble Supreme Court in the case of ***Serious Fraud Investigation Office vs. Rahul Modi and another*** reported in (2019) 5 SCC



266, at paragraph no.19 has observed as follows:-

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“19. The law is thus clear that “in Habeas Corpus proceedings a Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings”. In Kanu Sanyal⁸ the validity of the detention of the petitioner in District Jail, Darjeeling was therefore not considered by this Court and it was observed that the infirmity in the detention of the petitioner therein in the District Jail, Darjeeling could not invalidate subsequent detention of the petitioner in the Central Jail, Vishakhapatnam.”

8. In the present case on hand, the order of remand has been extended by the Magistrate himself and therefore, in a Habeas Corpus proceedings, the Court has to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. The validity of the detention of the petitioner even if there is infirmity, could not invalidate subsequent detention of the petitioner.

9. In view of the above facts and circumstances of the case, this Court is of the considered opinion that based upon the above findings rendered by the Hon'ble Supreme Court as well as the findings rendered by the High



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Court of Andhra Pradesh, the Habeas Corpus Petition itself is not maintainable. Accordingly, the Habeas Corpus Petitions are dismissed. No costs. If the petitioners are aggrieved, then they have to approach the appropriate forum seeking remedy, by way of filing bail applications.

[J.N.B.,J.] & [K.K.R.K.,J.]

02.01.2024

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

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Common Order made in

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Dated:

02.01.2024