
(2013) 06 MAD CK 0153
In the Madras High Court
Case No : H.C.P. No. 1049 of 2013

K. Jayanthi

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Foreigners Act, 1946 — Section 3(2)(e)

Citation : (2013) MLJ(Cri) 432

Hon'ble Judges : V. Dhanapalan, J;C.T. Selvam, J

Bench : Division Bench

Advocate : M. Shreedhar for M. Shreedhar and Associates, for the Appellant;
A.N. Thambidurai, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—The Habeas Corpus Petition is filed to direct the first respondent to produce the body of Mr. G. Karunairaj, S/o. Gnanamuthu M/50 years, before this Court from the illegal and unlawful custody of respondents 6 and 7 and set him at liberty and restore the custody to the petitioner. It is the case of the petitioner that on 21.8.2011, she came to Chennai with her husband Karunairaj and three children, namely (i) Shyamala, aged 19 years, female, (ii) Tika Devan, aged six years, male and (iii) Bumiputeri, aged five years, female, for shopping for her younger daughter's ear boring function and they were staying as family in Hotel Aravind Residency at Ekathangal, Chennai. While so, in the midnight, a team of Police Officers in un-uniform, headed by an Inspector called Chandrasekar of Central Crime Branch, Coimbatore City, the seventh respondent herein, suddenly banged the hotel room doors and when the petitioner opened, they pushed her down and entered their room. Thereafter, the petitioner was informed that they were Crime Branch Police Officers from Coimbatore and they asked her husband to speak to the then Commissioner of Police Mr. Sylendrababu, the sixth respondent over mobile phone personally and then there were some orders over phone to the said Inspector Chandrasekar, and

thereafter, she alleges that there was torture to them. Since her husband was on Court bail in all other cases, on 9.6.2013, when he came out from the Prison, he was kidnapped in Bolero Jeep by some unknown persons and his whereabouts were not known. The petitioner gave a complaint to the fifth respondent, who took the complaint, but failed to register any case, and hence, on 10.6.2013, the petitioner gave complaints to the respondents 1 to 3 and 5 by Registered Post. Since no action was taken to trace the petitioner's husband, she has filed this Habeas Corpus Petition for the above relief.

2. According to the learned counsel for the petitioner, the detenu is now confined in a Special Camp for the foreigners, pursuant to Government Order in G.O. Rt. No. 3749, Public (Foreigners-III) Department, dated 9.11.2011, which reads as follows:

In exercise of the powers conferred by Section 3(2)(e) of Foreigners Act, 1946 (Central Act 31 of 1946) read with the Notification of the Government of India, Ministry of Home Affairs, No. 4/3/56(1)F-1, dated the 19.4.1958, for regulating the continued presence of the foreigner, Dr. G.K. Raj @ Karunahraj @ G.K. Rajasekaran @ Dharmadevan @ Michael Raj @ Michael Soosai, S/o. Gnanamuthu, who is a Malaysian National, the Governor of Tamil Nadu hereby orders that he shall reside in the Special Camp for the foreigners identified and located by the Collector of Kancheepuram District at Chengalpattu.

2. The said Malaysian National Dr. G.K. Raj @ Karunahraj @ G.K. Rajasekaran @ Dharmadevan @ Michael Raj @ Michael Soosai, S/o. Gnanamuthu, shall not leave the boundaries of the above Special Camp except with the permission of the Collector.

3. The said Government Order was challenged by the detenu-G. Karunairaj before this Court in W.P. No. 27221 of 2011 and a learned single Judge, by order dated 29.2.2012, allowed the said Writ Petition, holding as follows:

41. In view of the above, the writ petition is allowed, the impugned order is set aside and the respondents are directed to allow the petitioner to move out of the special camp. The first respondent shall look into the complaints made by the petitioner, in order to avoid an impression that serious allegations against higher officials would get wiped under the carpet. There will be no order as to costs. Consequently connected miscellaneous petition is closed.

4. Learned counsel for the petitioner further submitted that inspite of the said G.O. having been quashed by the abovesaid order dated 29.2.2012 in W.P. No. 27221 of 2011, the petitioner's husband was confined in the Special Camp without any special order till filing of H.C.P. No. 530 of 2012, by the petitioner's daughter Shyamala, for production of her father, the detenu herein, and the said H.C.P. No. 530 of 2012 was dismissed for non-prosecution, by order dated 28.8.2012 passed by a Division Bench of this Court. It is the further contention of the learned counsel for the petitioner that during the pendency of the said H.C.P. No. 530 of 2012, the State Government filed Writ Appeal in W.A. No. 651

of 2012 before this Court, challenging the order dated 29.2.2012 passed in W.P. No. 27221 of 2011, without even serving "caveator notice of motion". Subsequently, a Division Bench of this Court, by order dated 29.3.2012 in W.A. No. 651 of 2012, stayed the said order dated 29.2.2012 passed by the learned single Judge and thereafter, the said order of stay, dated 29.3.2012, was directed to continue, by order dated 30.7.2012 passed in W.A. No. 651 of 2012. It is the grievance of the petitioner that pursuant to the orders passed by the Division Bench granting stay, once again, the petitioner's husband (detenu) was detained in the Special Camp. The petitioner's grievance is that in the meanwhile, to avoid the petitioner's husband being out of their control, the Coimbatore Central Crime Police arrested the petitioner's husband in C.C. No. 18 of 2011 on 21.5.2012 in NBW warrant. The petitioner alleges that the foreigners' camp and prison are the same and the detainees are not allowed to move out without any permission from the District Collector and if that is so, obtaining NBW from the Court and arresting her husband, detaining him in prison, is in gross violation of the stay order granted in W.A. No. 651 of 2012.

5. Learned counsel for the petitioner further contended that the petitioner's husband filed bail petition in CrI. O.P. No. 4400 of 2013, which was dismissed by this Court on 5.3.2013, with a direction to the learned Judicial Magistrate-VII, Coimbatore, to complete the trial in C.C. No. 18 of 2011, on or before 15.4.2013. Since the said direction was not complied and as the trial had not been completed before 15.4.2013, the detenu filed another petition in CrI. O.P. No. 10269 of 2013 and this Court, by order dated 8.5.2013, directed the learned Magistrate to file his report on the case on or before 10.6.2013 and directed the Registry to list the bail petition in CrI. O.P. No. 10269 of 2013 on 11.6.2013 and the said CrI. O.P. No. 10269 of 2013 is pending before this Court.

6. It is further alleged by the learned counsel for the petitioner that after the said order dated 8.5.2013 passed in CrI. O.P. No. 10269 of 2013, the learned Judicial Magistrate-VII, Coimbatore expedited the trial and delivered judgment on 7.6.2013 in C.C. No. 18 of 2011, acquitting the petitioner and convicting her husband for one year simple imprisonment and ordered release of her husband by adjusting the remand period undergone in the jail. Thereafter, the petitioner's husband was on Court bail in all other cases and on 9.6.2013, when he came out from the prison, he was kidnapped in Bolero Jeep by some unknown persons and the whereabouts of the detenu was not known. Subsequently, she gave a complaint to the fifth respondent, who took the complaint, but failed to register any case and hence, on 10.6.2013, she gave complaints to the respondents 1 to 3 and 5 by Registered Post and since no action was taken to trace her husband, she has filed this Habeas Corpus Petition.

7. When the Habeas Corpus Petition is taken up for hearing today, the learned Additional Public Prosecutor produced the detenu-G. Karunairaj through Police officials. We have enquired the detenu, who stated that presently, he is lodged in the Special Camp at Chengalpattu. The only grievance expressed by him is that

he has to take legal assistance and he may be treated with all rights available to a prisoner. Learned Additional Public Prosecutor fairly submitted that the detenu will be given necessary legal assistance, which was not made available to him.

8. Learned Additional Public Prosecutor produced the status report, dated 19.6.2013, filed by the Inspector of Police, City Crime Branch, Coimbatore City, which reads as follows:

....

2. I submit that Dr. G.K. Raj @ Karunai Raj @ G.K. Raja Sekaran @ Dharmadevan @ Michel Raj @ Michel Soosai (detenu herein) is involved in the following cases:

3. I submit that on 3.6.2013 morning, the Detenu was taken from Central Prison, Puzhal to Central Prison, Coimbatore in connection with Coimbatore City Crime Branch Cr. Nos. 38, 77 and 83 of 2010 with Chennai City Armed Reserve Escort Team consisting PC 32666 Tr. Maduranthagam, PC 32959 Tr. Logesh and PC 33504 Tr. Salaikumar and reached Central Prison, Coimbatore on 3.6.2013 night and halted there.

4. I submit that on 4.6.2013, the Detenu was produced before the learned Judicial Magistrate No. VI and VII in connection with Coimbatore City Crime Branch Cr. Nos. 38, 77 and 83 of 2010 under the same Chennai City AR escort mentioned above.

5. I submit that on 5.6.2013 to 7.6.2013, the Detenu was produced before the learned Judicial Magistrate No. VII in connection with Coimbatore City Crime Branch Cr. No. 77 of 2010 under the same Chennai City AR escort mentioned above and the learned Judicial Magistrate No. VII vide an order dt. 7.6.2013 in C.C. No. 18 of 2011 in Cr. No. 77 of 2010 convicted the Detenu. Thereafter, on 7.6.2013, the Detenu was brought back to Central Prison, Coimbatore and halted there at night.

6. I submit that on 8.6.2013 morning, the Detenu was brought back from Central Prison, Coimbatore under the same Chennai City AR escort, reached Central Prison, Puzhal on 8.6.2013 night and halted there.

7. I submit that on 9.6.2013, in order to produce the Detenu in connection with other cases in Coimbatore City Crime Branch, as per the instruction of the Assistant Commissioner of Police, City Crime Branch, Coimbatore, Tr. Veerappan, Special Sub-Inspector of Police and HC 704 Tr. Senthilkumar attached to Coimbatore City Crime Branch went to Central Prison, Puzhal to know where the Detenu is going to be kept and on enquiry, they ascertained that the Detenu was released from Central Prison, Puzhal in C.C. No. 18 of 2011 by virtue of the set off given to the Detenu by the Judicial Magistrate No. VII, Coimbatore. While so, the Detenu came out of the Central Prison, Puzhal and at that time, the Chennai "Q" Branch party headed by Tr. Chandran, Inspector of Police and Others taken the Detenu in a police vehicle to Special Camp, Chengalpattu, as per the

Government Order. Thereafter, the said Tr. Veerappan, Special Sub-Inspector of Police and HC 704 Tr. Senthilkumar went to Special Camp, Chengalpattu, obtained an acknowledgement from the Inspector of Police, Special Camp (In-charge), Chengalpattu, returned to Coimbatore and submitted the same before the Assistant Commissioner of Police, City Crime Branch, Coimbatore.

8. I submit that the Detenu was produced before the concerned Magistrate by virtue of Court order through police escort; thereafter, by virtue of a judgment by the Judicial Magistrate No. VII, the Detenu was released from the Central Prison, Puzhal. Further, the "Q" Branch police taken the Detenu and kept at Special Camp, Chengalpattu as per the Government Order dated 9.11.2011, because the said order is still in force. Therefore, the question of abduction or illegal detention does not arise.

....

9. We have heard the learned counsel appearing for the parties and perused the entire case materials available on record.

10. It is seen that by virtue of the abovesaid G.O., the detenu has now been kept in the Special Camp for foreigners, identified and located by the Collector of Kancheepuram District at Chengalpattu, in which, it is specifically stated that he shall not leave the boundaries of the above Special Camp, except with the permission of the District Collector concerned. Since a Division Bench of this Court stayed the order passed by the learned single Judge allowing the Writ Petition in which the said G.O. was challenged, he is again under custody.

11. At this juncture, it is unfortunate to note that the abovesaid status report filed by the Inspector of Police, City Crime Branch, Coimbatore City, does not disclose under which order of this Court, the detenu has now been detained in the Special Camp, Chengalpattu. On a scrutiny of the affidavit filed in support of the Habeas Corpus Petition, it is seen that the petitioner has disclosed all relevant facts and in paragraph 35, she has stated that the order passed by the learned single Judge in W.P. No. 27221 of 2011, had been stayed a Division Bench of this Court in W.A. No. 651 of 2012. Thereafter, this Court verified the records and came to know that by orders dated 29.3.2012 and 30.7.2012, the Division Bench has stayed the order dated 29.2.2012 passed by the learned single Judge in W.P. No. 27221 of 2011. As the order of the learned single Judge had been now stayed by the Division Bench of this Court, it is incumbent on the part of the respondents to act according to the order passed by the Division Bench of this Court. Thus it is inferred that pursuant to the said order of stay passed by the Division Bench, the detenu has been now legally confined in the Special Camp, Chengalpattu and the detenu also stated before this Court that he is at present detained in the said Special Camp.

12. The grievance put forth by the detenu that he has not been given any legal assistance to defend his case, has to be considered by the concerned authority and whenever there is any request by the detenu in that regard, the authority

concerned shall consider the same with immediate attention without any hesitation. The detenu has been now produced before this Court in consequence of the orders of stay, dated 29.3.2012/30.7.2012 passed by the Division Bench of this Court in W.A. No. 651 of 2012, filed against the order dated 29.2.2012 passed by the learned single Judge while allowing W.P. No. 27221 of 2011, in which G.O. Rt. No. 3749, Public (Foreigner-III) Department, dated 9.11.2011, was challenged, by which, he has been directed to reside in the Special Camp for foreigners identified and located by the Collector of Kancheepuram District at Chengalpattu and since the detenu is now in lawful confinement in the Special Camp, the Habeas Corpus petition is dismissed, with the above observations/direction.