

(2005) 07 MAD CK 0075

In the Madras High Court

Case No : Habeas Corpus Petition No's. 528 and 572 of 2005

Nallarasan

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 309

Citation : (2005) 07 MAD CK 0075

Hon'ble Judges : P. Sathasivam, J;AR. Ramalingam, J

Bench : Division Bench

Advocate : R. Sankarasubbu, for the Appellant; K. Doraisami, Public Prosecutor, for the Respondent

Judgement

P. Sathasivam, J.—In both these petitions, the petitioner, namely, Nallarasan claiming to be friend of the detenues seeks direction to the

respondent-Deputy Superintendent of Police, Q-Branch, Villupuram and Cuddalore for production of one Venkatesan, TADA prisoner now

confined at Special Sub Jail, Poonamallee and Peter @ John Peter and Uthirapathy, confined at Sub Jail, Poonamallee before this Court and set

them at liberty.

2. It is not in dispute that Venkatesan, son of Pandurangan is facing trial under the provisions of TADA Act on the file of Designated Court-II,

Chennai and subsequently transferred to Special Court, Poonamallee. The other two persons, namely, Peter @ John and Uthirapathy were also

facing same charges and their cases are also pending before the same Court. It is the grievance of the petitioner that after the transfer of then

Presiding Officer, there is no Presiding Officer and remand was extended from time to time by the learned VI Additional Sessions Judge, who had

no power to remand the detention u/s 309 Cr.P.C. Mr. R. Sankarasubbu, learned counsel for the petitioner in both the Habeas Corpus Petitions,

would contend that since there is no Presiding Officer in the designated Court and in view of the fact that the detenues are languishing in jail for

several years, direction may be issued for release of all the three detenues. Learned Public Prosecutor appearing for the respondent would submit

that in the case relating to Venkatesan (detenu in H.C.P. No. 528/2005) recording of evidence was over and only argument has to be made by

both sides. He also submitted that in the case of Peter @ John Peter and Uthirapathy, except official witnesses, all others have been examined and

even the examination of those witnesses is likely to be over shortly. Further, according to him, in view of the order of the Division Bench dated 4-

3-2004 made in H.C.P. Nos. 1488, 1489 and 1490 of 2003 (S. Nallarasan v. Deputy Superintendent of Police, Q-Branch CID, Chingleput

Range and Two Ors.) filed by the very same petitioner, dismissing similar requests relating to the very same detenues, the present petitions are

liable to be dismissed.

3. We have verified the earlier order of the Division Bench dated 4-3-2004 annexed along with the counter affidavit filed by the respondent. It is

not in dispute that the said Habeas Corpus Petitions were filed by the very same petitioner seeking similar relief, namely, release of the above

mentioned accused. It further shows that the Division Bench, after considering the contentions raised and perusing various decisions of the

Supreme Court, dismissed all the 3 petitions. Though Mr. R. Sankarasubbu submitted that there is no constructive res judicata and the petitioner is

entitled to pursue these petitions, on going through the earlier order of the Division Bench, we are unable to accept the claim of the learned counsel

for the petitioner. Apart from this, as stated earlier, it is seen from the learned Public Prosecutor that in the case of Venkatesan, except argument,

examination of witnesses have already been concluded. In the case of other two detenues, only official witnesses have to be examined. It is also

brought to our notice that by G.O.Ms. No. 566-Home (Courts.II) Department dated 05-07-2005, the Government of Tamil Nadu issued a

Notification conferring powers to deal with TADA cases in respect of the present incumbent, namely, Thiru T. Ramasamy, V Additional City Civil

and Sessions Judge, Chennai. Accordingly, there may not be any impediment in early disposal of those cases. Considering all these factual details

and in the light of well considered earlier decision of this Court in H.C.P. Nos. 1488, 1489 and 1490 of 2003 dated 4-3-2004, we do not find any

merit in the claim made by the petitioner; consequently both the Habeas Corpus Petitions are dismissed.