
(2016) 01 MAD CK 0050
In the Madras High Court
Case No : H.C.P.(MD) No. 1797 of 2015

Rajendran

APPELLANT

Vs

The Inspector General of Police and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Constitution of India, 1950 — Article 21

Penal Code, 1860 (IPC) — Section 394, Section 395, Section 397, Section 399

Citation : (2016) 01 MAD CK 0050

Hon'ble Judges : P.R. Shivakumar and V.S. Ravi, JJ.

Bench : Division Bench

Advocate : R. Udhayakumar, for the Appellant; R. Ramachandran, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—1. It is a case of high-handedness on the part of the Superintendent of Central Prison, Madurai, showing how pervasive the lawlessness in this part of the country.

2. Muthurakku @ Muthuraj, S/o. Rajendran, aged about 26 years had been remanded to judicial custody in Crime No. 343 of 2014 of T. Kallupatti Police Station for an offence under Section 399 of the Indian Penal Code. Subsequently, a bail application in the said case came to be filed before the learned Principal Sessions Judge, Madurai, in CrI.M.P. No. 8747 of 2014. The said application was allowed and the learned Principal Sessions Judge, Madurai, by his order dated 26.11.2014, granted bail and directed the release of Muthurakku @ Muthuraj so far as the said case, namely Crime No. 343 of 2014 on the file of T. Kallupatti Police Station was concerned. Similarly, a case came to be registered against him in Crime No. 397 of 2012 for offences under Sections 395 and 397 of the Indian Penal Code. The final report in which case was filed before the Committal Court and on being committed for trial, the case was taken on file as S.C. No. 69 of 2015 and made over to the learned Assistant Sessions Judge (Special Judge)

Pollachi. In the said case, Muthurakku @ Muthuraj remained absent and a non-bailable warrant came to be issued by the said Court. Meanwhile, he filed a bail application before the Principal Bench of Madras High Court in CrI.O.P. No. 24962 of 2015 which was allowed and a conditional bail was granted in the said case on 08.10.2015. Pursuant to the said order, necessary bail bond also came to be executed with two sureties to the satisfaction of Judicial Magistrate No. 1, Pollachi. Similarly, based on the order of the learned Principal Sessions Judge, Madurai, dated 26.11.2014 made in respect of Crime No. 343 of 2014 on the file of T. Kallupatti Police Station, necessary bail bond to the satisfaction of the learned Judicial Magistrate, Peraiyur, Madurai District came to be executed on 03.12.2015. Even thereafter, Muthurakku @ Muthuraj was not released from the Central Jail, Madurai, in which, he was confined, pursuant to the orders of remand passed in the above said cases. Under the said circumstances, alleging violation of the personal liberty guaranteed under Article 21 of the Constitution of India, the petitioner, who is none other than the father of Muthurakku @ Muthuraj, has approached this Court with the present Habeas Corpus Petition for the production of Muthurakku @ Muthuraj, directing his release.

3. The respondents, who are represented by Mr. R. Ramachandran, learned Additional Public Prosecutor, relying on a PT warrant issued by the learned Judicial Magistrate No. IV, Coimbatore, for the production of Muthurakku @ Muthuraj in P.R.C. No. 44 of 2013 in respect of Crime No. 24 of 2013 registered on the file of Chettipalayam Police Station for an offence under Section 394 r/w 397 of the Indian Penal Code and the warrant returning the prisoner to the Central Jail after having been produced before the said Court for facing the charge against him in the said case, have submitted a reply stating that the said Judicial Magistrate No. IV, Coimbatore authorised his detention until further communication regarding his production in the said PRC, which was committed to the Sessions Court on 13.10.2015. However, the respondents are not in a position to show any order of remand passed in the said case, namely, Crime No. 24 of 2013 on the file of Chettipalayam Police Station authorising the detention of Muthurakku @ Muthuraj in the said case. They are also not able to say whether he had been granted bail in respect of the said case registered on the file of Chettipalayam Police Station.

4. The learned counsel for the petitioner would submit that Muthurakku @ Muthuraj had been granted bail in respect of Crime No. 24 of 2013 and that was the reason why, on his production in the said case based on PT warrant, no remand or remand extension order came to be passed authorising his custody in respect of the said case.

5. In the light of the said submission made by the learned counsel for the petitioner and also in the light of the fact that Muthurakku @ Muthuraj had been granted bail in the other two cases in respect of which he was remanded to judicial custody pursuant to which he had been kept in the Central Prison, Madurai and also in the light of the fact that the respondents are not in a position

to show any order of remand in Crime No. 24 of 2013 on the file of Chettipalayam Police Station or in any other case authorising his detention, this Court is convinced that the petitioner is right in contending that his son Muthurakku @ Muthuraj is kept in the Madurai Central Jail without any authority of law and that his personal liberty has been denied from 04.12.2015, the admitted date of execution of the bail bond in respect of Crime No. 343 of 2014 on the file of T. Kallupatti Police Station.

6. The scope of PT warrant has been explained in an order of a Division Bench of Madras High Court made in K.S. Muthuramalingam v. State in H.C.P. No. 1151 of 2010 delivered by the Division Bench consisting of one of us (P.R. SHIVAKUMAR, J). The provisions relating to the production of the prisoners under PT warrant came to be elaborately discussed and it was finally held that PT warrant is only a direction to produce the prisoner before the Court to give evidence or to face trial or answer the charges and it cannot be taken as an authorisation to keep the prisoner in custody. In the said order, it was also made clear that if the authorisation, namely, a remand order or a detention order under the Preventive Detention Act or a warrant on conviction to suffer the sentence, expires before the date fixed for the production of the prisoner in a particular Court on PT warrant, the jail authorities cannot keep them in custody and it shall be their duty to release him informing the fact that he had been directed to be produced before the particular Court and thus, giving him an intimation for his appearance in the particular case so as to avoid any non-bailable warrant and arrest. The other way out is to produce him before the expiry of the period of remand or detention before the said Court which issued the PT warrant to get necessary orders. If at all the prisoner had already been granted bail in the case in which PT warrant has been issued, the said choice is also not available to the jail authorities. Judgements are pronounced and orders are passed to be obeyed and not to be forgotten or disobeyed. Such an order came to be passed long back in July, 2010 itself. The proposition made therein is not a new one. It is only an explanation of the provisions relating to remand, custody and release and also the scope of PT warrant. Still, the third respondent seems to have flouted the rule of law and kept the petitioner's son Muthurakku @ Muthuraj without any authorisation under law for his continued custody. As the third respondent has not proved that the continued custody of Muthurakku @ Muthuraj is authorised by law, the said custody for the period beyond 04.12.2015 becomes illegal custody and hence, without any hesitation, we are constrained to direct the release of Muthurakku @ Muthuraj forthwith.

7. In the result, this Habeas Corpus Petition is allowed and the third respondent is directed to release the son of the petitioner, namely Muthurakku @ Muthuraj, forthwith. However, if the third respondent is able to produce any order of remand passed in any other case prior to time of passing this order, he is free to mention the same and seek necessary orders. It is open to Muthurakku @ Muthuraj to proceed against the authorities and the State for getting compensation for the illegal custody, he has suffered.