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HCP No. 768 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-06-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

HCP No. 768 of 2026

Mohamed Sameer
S/o.Zahir Hussain,
No.8/21, Dharga North Street,
Thondi, Thiruvadanai,
Ramanathapuram District - 623 409.

..Petitioner(s)

Vs

1. The Home Secretary,
Home Department (Prison),
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director General of Prisons,
Tamil Nadu Prison Department,
Egmore,
Chennai - 600008.
3. The Deputy Inspector General of Prisons,
Chennai Range,
Chennai.
4. The Superintendent of Prison,
Central Prison-I,
Puzhal,
Chennai -600 066.
5. The Joint Secretary
Ministry of External Affairs,
South Block,
New Delhi-110001.
6. The Joint Secretary (cs)
Government of India,



Ministry of Home Affairs,
North Block,
New Delhi-110001.

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(R5 and R6 are suomotu impleaded as per the
order of this court dated 21.04.2026 in
HCP.No.768 of 2026)

..Respondent(s)

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the Respondents to produce the detenu Zakir Hussain before this Hon'ble Court and set him at liberty forthwith, as his detention beyond 21.09.2022 is illegal, unconstitutional and void, and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner(s): Mr. M. Mohamed Saifulla
for Ms.R.Bakiyalakshmi

For Respondent(s): Mr. C.R. Malarvannan, (for R1 to R4)
Counsel for Government of Tamil Nadu
(Criminal Side)

Mr.K.Ramanamoorthy, (for R5 & R6)
Senior Panel Counsel

ORDER

(Order of the Court was made by Dr.Anita Sumanth J.)

Heard Mr.M.Mohamed Saifulla for Ms.R.Bakiyalakshmi, learned counsel for the petitioner, Mr.C.R.Malarvannan, learned Counsel for Government of Tamil Nadu (Criminal Side) for R1 to R4 and Mr.K.Ramanamoorthy, learned Senior Panel Counsel for R5 and R6.

2.The facts that emerge from the hearing are as follows:

(i)The father of the petitioner, Mr.Zahir Hussain (convict) had been



convicted by the Sri Lankan Court on 18.05.2015 for life, for offences relating to drug trafficking, specifically possession of 720 grams of heroin.

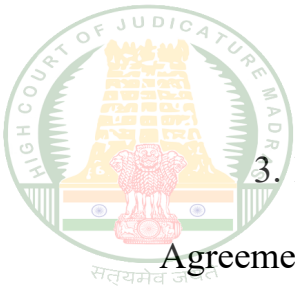
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(ii)The convict had sought repatriation to India for serving his sentence, in terms of the '*Agreement between the Government of the Republic of India and the Government of the Democratic Socialist Republic of Sri Lanka on the transfer of sentenced persons.*'

(iii)The request for repatriation came to be considered, and by order dated 29.07.2016, the Joint Secretary, Ministry of Home Affairs, Government of India, reduces the sentence, ostensibly on par with the sentence by an Indian Court for the same offence. Paragraph 4 of order dated 29.07.2016 reads as follows:

‘.....
4. Similarly, Zahir Hussain who was convicted for possession of 720 gms of heroin would be sentenced u/s 21 of the NDPS Act in India which entails a sentence of 10 years and a fine of Rs. one lakh rupees, and after taking into account the period of detention/imprisonment undergone he would be incarcerated upto 21/09/2022 once repatriated to India.’

(iv)In fact, the sentence, as modified by the Joint Secretary, is not in line with the punishment prescribed under Section 21 of the NDPS Act. The sentence stipulated is upto 21.09.2022 when the convict would have suffered sentence of only 7 years whereas the sentence, had he been convicted under Indian law, would have been 10 years. This is perhaps why the Habeas Corpus Petition has been filed only in 2026 after 10 years of sentence.



3. Learned Standing Counsel has drawn our attention to Article 8 of the Agreement that is titled '*Continued Enforcement of Sentence*' and reads as follows:

'ARTICLE 8

Continued enforcement of sentenced

1. *The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.*

2. *If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by an order of a Court or by an administrative order, with the consent of the transferring State, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration, the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall, however, not aggravate, by its nature or duration, the sentence imposed in the transferring State.'*

4. Our analyses of Article 8 is as follows. Article 8(1) states that the receiving State (India) shall be bound by the legal nature and duration of the sentence as determined by the transferring State (Sri Lanka). Hence, it is normally required for the receiving State to enforce the sentence as awarded by the Foreign Court.

5. An exception is made out in Article 8(2) in a situation where the sentence is, by its nature or duration or both, incompatible with Indian Law. In such circumstances, the Authority may, after obtaining a Court order or passing an administrative order for which the consent of the Sri Lanka has also to be obtained, adapt the sentence to one of punishment as prescribed by the Indian Government.



6. In the present case, this is not been done. Hence, reliance by the Centre on Article 8 of the Agreement is, prima facie of no avail.

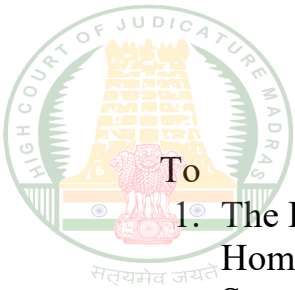
7. Despite our repeated enquiries, learned Counsel is unable to show us any exchange of communication making reference to order dated 29.07.2016, in the absence of which, we are not in a position to even infer that the Sri Lankan Government has accepted or even been informed about the adoption of the sentence of the Sri Lankan Court to Indian Law.

8. R4 and R5 are put to terms and shall remit Rs.50,000/- to High Court Legal Services Committee within four weeks.

9. List on 25.06.2026.

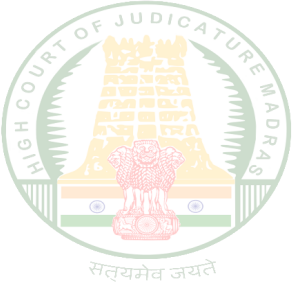
(A.S.M.,J.) (S.M.,J.)
18-06-2026

VS



To

1. The Home Secretary,
Home Department (Prison),
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Chennai - 600 009.
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Egmore, Chennai - 600008.
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5. The Joint Secretary
Ministry of External Affairs,
South Block, New Delhi-110001.
6. The Joint Secretary (cs)
Government of India,
Ministry of Home Affairs,
North Block,
New Delhi-110001.
7. The Member Secretary,
High Court Legal Services Committee, High
Court, Madras.
8. The Public Prosecutor, High Court, Madras.



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**DR.ANITA SUMANTH J.
AND
SUNDER MOHAN J.**

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