

**M. Baskaran Vs. State**

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**Court :** Delhi

**Decided On :** Dec-27-1988

**Reported in :** 37(1989)DLT298

**Judge :** P.N. Nag, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 41(8) and 439;  
[Extradition Act, 1962](#) - Sections 25

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 1801 of 1988

**Appellant :** M. Baskaran

**Respondent :** State

**Advocate for Pet/Ap. :** M.M. Sareen and; S.D. Salwan, Advs

**Judgement :**

**P.N. Nag, J.**

(1) This is a petition under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Criminal Procedure) for bail.

(2) It appears that on the basis of a telex message received from Kaula Lampur. Malayasia. the petitioner was arrested by the Police Station Indraprastha Estate. New Delhi on 14th December, 1988 under Section 41(l)(g) of the Criminal

Procedure which authorises a Police Officer to arrest a person without an order from Magistrate and without a warrant for an alleged offence of Criminal Breach of Trust by a Public Servant under Section 409 of the Malaysian Penal Code.

(3) After the arrest, the petitioner was produced before Shri R K. Jain, Metropolitan Magistrate who fixed the matter for 16th December, 1988, The bail application of the petitioner which was preferred by him to the learned Magistrate was kept pending on the request of the State Counsel claiming that enquiry was pending and directions of the Home Ministry, Government of India were being sought.

(4) The bail application was heard by the learned Metropolitan Magistrate on 19th December, 1988 and the same was rejected by him. The rejection Order of the learned Magistrate is reproduced below : 'Heard. Perusal of record. 1.0. present. He has shown telex message and other relevant documents were being summoned through Ministry of Home Affairs, concerning the fact. Accused cannot be released at present. Rejected.' It is apparent from the said order that at that stage, i.e. on 19th December, 1988 only telex message was available with the Police which was shown to the petitioner and no other documents were available with them which were being summoned by them through Ministry of Home Affairs concerning the fact.

(5) The petitioner was again produced before the learned Magistrate on 23.12.1988 who remanded the petitioner to Judicial Custody till 26th January, 1989. The petitioner, however, filed an application for bail again before the learned District & Sessions Judge which was assigned to Shri Jaspal Singh, Additional District Judge. The matter was taken up by the learned Additional District Judge and at the time of bearing he was shown telex message received from the I.P.. Kaula Lumpur, Malaysia, copy of which has been annexed by the petitioner as Annexure I to the Petition. The contents of that Annexure are reproduced below : 'From : Ip Kuala Lumpur Pormma 30469 Dtd 160830/609004 To : Ip New Delhi 312513 Cbin In Info : Kpo Pengkaland Hucu Our ref. No. : Us (IP) Kpn (PR) 71/5/46 dt. 16.12.88 Sx Re : Baskaran Mathurai. Malaysian National D.O.B. 30 Us (IP) Kpn (PR) 71/5/46-30.8.88 300 Re : Suspect Baskaran Mathurai Malaysian National Date of birth 308 1954, Perak, Holder of Malaysian International Passport

No. X-1982448 and holder of Malaysian I.D. Card No. 4707849 Resident of 3 Sumner Road, Lim Garden, Siligen, Ipoh. West Malaysian wanted for arrest for offence of criminal breach of trust by a public servant, Section 409 Penal Code. We believe subject has fled to India or Australia. Request conduct discrete enquiry with view to extradite. From-Kuala Lumpur' At the time of hearing of the bail application before the learned Additional District Judge the State sought time/adjournment on the ground that the application was to be argued by the Public Prosecutor who had gone on leave. Since the State was seeking time/adjournment on one pretext or the other and delaying the matter there was no option for the petitioner except to withdraw his bail application, as according to him he was under illegal detention and adjournment of the case on one pretext or another clearly amounted to rejection of bail. Even otherwise, he could move the High Court under Section 25 of the [Extradition Act, 1962](#) (hereinafter referred to as 'Extradition Act') after the rejection of the bail by the Magistrate as Magistrate has in such cases powers of Court of Sessions,

(6) The petitioner thereafter filed this petition in this court on 26th December, 1988 and an advance copy was supplied in the office of the Standing Counsel for the State. The Counsel for the petitioner took permission of the court to mention this matter being urgent on 26th December, 1988 and also requested the Government Counsel to attend the court but due to some unavoidable reasons the Government Counsel could not attend the court on that day. The Court, therefore, issued a notice to the State for 27th December, 1988- which was duly served on the respondent's Counsel in the morning today itself But none on behalf of the State is even present today. Since the matter involves personal liberty of the person which is very precious right guaranteed under Article 21 of the Constitution of India there . is no escape for me but to hear this matter today itself.

(7) The case set up by the petitioner in the petition is that he is innocent and has been falsely implicated by the Government of Malayasia as he belongs to Indian Origin. He has further stated that while in Malayasia the petitioner was the Vice President of the Malayasian Indian Congress, Chairman of the India Temple in Kroh City and Secretary of the Indian Youth Movement. In such a capacity he spear-headed the movement against the Malayasian Authorities on account of

racial and ethnic prejudice against persons of Indian Origin in Malayasia. In fact, the petitioner is a deeply religious man he had even donated the entire land allotted to him by the Malayasian Authorities to the Indian Temple there, and he has been a social worker and spent his life for the welfare of the people of the Indian Origin in Malayasia and because of these movements he has been falsely implicated.

(8) The petitioner has gone to Foreign Registration Regional Office (FRRO for short) on 14th December, 1988 for the regular extension of his visa, he was detained there and was arrested by the staff of Police Station, 301 I.P. Estate, New Delhi No grounds for arrest were disclosed to him except that he was told that he was arrested on the basis of a message received from Malayasian Government. The petitioner was born and had been living in Malayasia till 1982 and that he was employed with the Land Office at Kroh, Kedah. The petitioner after having resigned his job in February, 1982 left Malayasia for Canada and again returned to Malayasia in September, 1982. Thereafter, he proceeded to Singapore, Sri Lanka and finally came to India in December, 1982 and thereafter he is residing in India. Since he is a Malayasian passport holder, he has to get his visa renewed from the FRRO after a stipulated period and for that purpose he had gone to FRRO on 14th December, 1988 were he was detained. The petitioner was not hiding himself anywhere rather he was getting his visa renewed regularly.

(9) I have heard the learned Counsel for the petitioner at length. He has vehemently argued that in the facts and circumstances of the case, the petitioner should have been arrested only under the warrant issued by the Magistrate under the provisions of Extradition Act, particularly under Sections 6 and 9 thereof. Since this procedure has not been followed at all and no proceedings have been initiated against the petitioner under the Extradition Act, the arrest of the petitioner is wholly without authority of law. He has further contended that even otherwise the petitioner could not have been arrested under Section 41(l)(g) of the Criminal Procedure as conditions and requirements laid down for empowering the Police Officer to arrest any person without an Order from the Magistrate and without a warrant have neither been fulfilled nor complied with in the background of this case. Either way the detention/arrest of the person is wholly unsustainable in the

eye of law and the petitioner deserves to be released on bail forthwith. In fact he is entitled to be set on liberty forthwith under the Habeas Corpus Petition. Strong reliance has been placed by the Counsel for the petitioner in *Subodh Chandra Ray Choudhuri v. The King Emperor* (Calcutta Weekly Notes-Vol. 29 page 98). However, he will be satisfied that in case the petitioner is released on bail at this stage, he will face extradition proceedings, if any, initiated against him at any time under the Extradition Act, and prove his innocence. I have given very careful and deep consideration to the submission made by the learned Counsel for the petitioner and in my opinion, there is a good deal of force in his submission.

(10) In order to appreciate the contention of the learned Counsel for the petitioner it is relevant to mention the relevant provisions of the Extradition Act. An elaborate procedure has been provided in Chapter II of the [Extradition Act, 1962](#) to regulate such a case as no extradition arrangements have been made for the return of fugitive criminals to Malaysia, a commonwealth country. Under Section 4 of the Extradition Act, a requisition for the surrender of a fugitive criminal of a foreign State or a commonwealth country may be made to the Central Government by a diplomatic representative of the foreign State or commonwealth country at Delhi; or by the Government of that foreign State or commonwealth country communicating with the Central Government through its diplomatic representative in that State or country; and if neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of the foreign State or commonwealth country with the Government of India. Under Section 5 if the Central Government thinks it fit it may issue an order to the Magistrate having jurisdiction in the matter to enquire into the case. Under Section 6 the Magistrate on receipt of an order of the Central Government under Section 5 has been empowered to issue warrant for the arrest of the fugitive criminal. Under Section 7 the procedure for holding enquiry by the Magistrate has been provided for and for the purpose of holding an enquiry he will take such evidence as may be produced in support of the requisition of the foreign State or commonwealth country and on behalf of the fugitive criminal. The magistrate if after holding the enquiry is of opinion that prima facie case is not made out in support of the requisition of the foreign State or commonwealth country he shall discharge the fugitive criminal. However, if the, prima facie case is made out he

may commit the fugitive criminal to prison await the orders of the Central Government, and shall report the result of his enquiry to the Central Government and shall forward together with such report, any written statement which the fugitive criminal may desire to submit for the consideration of the Central Government. Section 8 provides for that if the Central Government forms an opinion that the fugitive criminal ought to be surrendered to the foreign State or commonwealth country, it may issue a warrant for the custody and removal of the fugitive criminal and for his delivery at a place and to a person to be named in the warrant.

(11) The procedure prescribed for the Magistrate for the issue of warrant and holding enquiry into the matter on receipt of the requisition of the Central Government is very exhaustive procedure and it may be possible this may entail an amount of delay which would enable the fugitive criminal to escape. That, however, is a danger against which there is a double safeguard provided in the Act itself. On the receipt of the information from a foreign State or commonwealth country for the surrender of fugitive criminal the Magistrate can directly be approached under section 9 and the Section 9 clearly provides in such a case that the Magistrate may issue a warrant of arrest of a person on such information and on such evidence as would in his opinion justify the issue of warrant if the offence of person of which the person is accused or has been convicted had been committed within the local limits of his jurisdiction. The Section further provides that the Magistrate shall forthwith report the issue of warrant to the Central Government and forward the information and evidence or certified copies thereof to the Government. A person arrested under such a warrant under this Section shall not be detained for more than three months unless within that period the Magistrate receives from the Central Government an order made with reference to such person under Section 5. Under Section 25 of the Extradition Act a provision has also been made for the release of persons arrested on bail and the provisions of the Code of Criminal Procedure relating to bail have been applied in such cases as well and the fugitive criminal if brought before a Magistrate, he shall have the same powers as a court of Sessions under the Code. Admittedly recourse was not had to this procedure. therefore, the arrest and detention of the petitioner without recourse to the various provisions of the Extradition Act, which is a special Act is

prima facie illegal and without authority of law.

(12) It has already been submitted above, the police seems to have arrested the petitioner under Section 41(g) of the Criminal Procedure Code whereby the Police Officer has been empowered to arrest the person without an order from the Magistrate and without a warrant. The relevant portion of Section 41(l)(g) is reproduced below ; ' 41. When police may arrest without warrant-(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person- (g) who has been concerned in, or against whom a reasonable complaint has been made.or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or It is apparent from this provision that the arresting Police Officer has to exercise his own judgment and from his own opinion as to whether he should or should not act and to enable him to do .so he must have the necessary facts before him. What is a reasonable complaint or suspicion must depend on the circumstances of each particular case. but it must be at least founded on some definite fact tending to throw suspicion on the person arrested and not on mere vague surmise conjectures or information. A general definition of what constitutes reasonableness in a complaint or suspicion or credibility of an information cannot be given; both must depend upon the existence of some tangible proof within the cognizance of the arresting Police Officer and he must judge whether it is sufficient to establish the reasonableness or credibility of the charge, information or suspicion. In order to attract this provision, thereforee, it is necessary that the Police Officer must act under information which constitutes credible information or create reasonable suspicion.

(13) In the present case, as mentioned above, there is only a telex message from Kuala Lumpur, which has been reproduced above, that the petitioner is wanted for an offence of criminal breach of trust by a public servant under Section 409 of Malayasian Penal Code, and they had further requested for his extradition. This telex message does not disclose as to bow the alleged offence was committed by the petitioner and under what circumstances. This telex message only requests for

holding a discrete enquiry. In fact such telex message is too vague. This telex message can not be construed credible information or reasonable complaint or reasonable suspicion which can empower the Police Officer to arrest a person without an order of the Magistrate and without a warrant under Section 41(l)(g) of Criminal Procedure. In the absence of any credible information, therefore, the arrest of the petitioner under Section 41(1)(g) of the Criminal Procedure is wholly misconceived and without authority of law. Even otherwise in normal course to allow a person to be arrested by the police when no extradition warrant has been issued nor any requisition made and no assistance is sought for from the Magistrate within the local limits of whose jurisdiction the offender is at the time, would be to subvert the whole law as to arrest of fugitive offenders as contained in the Extradition Act which undoubtedly is the law regulating the procedure to be adopted in the case. Further, even if this 'power of the Police Officer to arrest a person without the order of the Magistrate and without a warrant under Section 41(l)(g) is invoked by the police this is on the supposition that the person arrested is liable to apprehension under the provisions of the Extradition Act, he must forthwith be produced before the Magistrate in order that the Magistrate may conform to the provisions of the Extradition Act. This also does not appear to have been done in this case so far. therefore, the arrest of the person is again wholly without authority of law. I am fully supported in my view by the decision of a Division Bench of Calcutta High Court in Subodh Chandra Ray Choudhuri v. The King Emperor decided on 198.24 29 CWN 98 where their Lordships have held almost in similar circumstances the detention of a person illegal and ordered for his release forthwith. In the background of the facts and circumstances of the case in my opinion the arrest and detention of the present petitioner prima facie is not warranted by law and he is required to be released on bail forthwith.

(14) The petitioner has never committed any offence before, he is a religious man and social worker and as such there cannot be any apprehension that he will do some act which will have the result of interfering in the administration of justice. Counsel for the petitioner states that the passport of the petitioner has already been impounded by the police and so he is unable to leave the country. In view of this, coupled with other facts stated hereinbefore , the petitioner even otherwise deserves to be enlarged on bail.

(15) Keeping in view the overall background, facts and circumstances of the case, in my opinion this is a fit case for granting bail to the petitioner. I therefore, hereby enlarge the petitioner on bail on his furnishing personal bond of Rs 25,000.00 with one surety in the like amount to the satisfaction of the Duty Magistrate, Tis Hazari. In case he is unable to furnish one surety, as ordered he will deposit the said amount of Rs. 25,000.00 in court. Such release, however, will be subject to the following conditions : 1. The petitioner will make himself available for and during extradition proceedings, if any, taken by the authorities and will present himself as and when required 2. The petitioner shall not leave India without the prior permission of the Court. 3. The petitioner shall not do anything which would result in any form whatsoever in the hampering with the administration of justice. dusty.

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