S.I. 12 of 2015

CRIMINAL PROCEDURE CODE

(Cap 54)

Criminal Procedure (Habeas Corpus) Rules, 2015

In exercise of the powers conferred by section 352(2) of the Criminal Procedure Code, the Chief Justice hereby makes the following Rules —

Citation

1. These Rules may be cited as the Criminal Procedure (Habeas Corpus) Rules, 2015.

Interpretation

2. In these Rules —

"Judge" means the Chief Justice or a Puisne Judge of the Supreme Court;

"Registry" means the Registry of the Supreme Court.

Application of these Rules

3.(1) Subject to subrule (2), these Rules shall apply to any person who is illegally or improperly detained in public or private custody within the limits of Seychelles.

(2) These Rules shall not apply to a person who is detained pursuant to an order or decision of a court, tribunal or any adjudicating authority.

Application for a writ of habeas corpus

4.(1) An application for issue of a direction of the nature of a habeas corpus shall be made to the Judge.

(2) The person making an application under subrule (1) shall file it in the Registry.

(3) Notwithstanding subrule (2), in cases of urgency or outside Registry hours, application may be presented directly

to the Judge who after considering the application forward it to the Registry.

(4) On receipt of the application under subrule (2) or (3), the Registrar shall cause the application to be entered in a register maintained for that purpose and place the application before the Judge immediately for orders.

(5) An application may be made by the person detained or by any other person on his or her behalf and no application shall be rejected on the grounds of standing.

(6) The respondent to the application may be identified by reference only to his or her office in the following circumstances—

(a) the Commissioner of Police, where the person is alleged to be detained in police custody;

(b) the Superintendent of Prisons where the person is alleged to be detained in a correctional facility; or

(c) the Commissioner of Police, where the person is alleged to be detained in any other circumstances.

(7) No court fees shall be payable for an application under these rules and no applicant shall be required to give security for cost.

Application to be supported by affidavit

5.(1) An application shall be supported by an affidavit by or on behalf of the person detained, describing the circumstances of the detention and specifying why it is asserted that the detention is illegal or improper.

(2) If the affidavit is made by a person other than the person detained, the fact as to why the affidavit cannot be made by the person detained shall be explained in the affidavit.

Issuance of a writ of habeas corpus

6.(1) A writ of habeas corpus may be issued where the Judge is satisfied that—

(a) the person is detained illegally, improperly or without the authority of law; and

(b) the application is not frivolous or vexatious.

(2) The Judge may—

(a) issue a writ of habeas corpus, directing the respondent to bring the person being detained before the Judge at a specified time on a specified date and to satisfy the Judge the reasons for the person's detention; or

(b) order the respondent to appear before the Judge at a specified time on a specified date in order to justify the lawfulness of the person's detention.

(3) If the Judge is not satisfied with the reasons submitted pursuant to subrule (2), the Judge may—

(a) fix an urgent *ex parte* hearing of the application; or

(b) direct the respondent to file a reply to the application and fix an urgent *inter parte* hearing of the application.

Release of person detained pending final determination of application

7.(1) The Judge may order the release of the person detained from the detention pending the final determination of the application, and such order shall be a sufficient warrant to the public officer for the immediate release of the person.

(2) The Judge may attach any conditions to the order as the Judge considers appropriate in the circumstances.

(3) The Judge shall not order the release of any person who—

(a) has been charged with an offence; or

(b) is serving a term of imprisonment.

Urgency

8.(1) An application made under these Rules shall be accorded the highest priority by the Judge and the Registry.

(2) The Registrar shall effect service directed by the Judge under these rules within 24 hours of the direction.

(3) The Registrar shall bring any delay in service to the attention of the Judge immediately.

(4) Where an application is to be heard *ex parte*, the hearing shall be fixed at the earliest available opportunity not exceeding 5 working days after the date on which the application was filed.

(5) Where an application is to be heard *inter partes*, the hearing of the application shall—

(a) be fixed at the earliest available opportunity not exceeding 7 working days after the date of service on the respondent;

(b) take precedence over all other matters listed for hearing on that day; and

(c) take place after divulging amongst the parties all relevant documents.

Writ of habeas corpus

9.(1) A writ of habeas corpus shall be issued in such form as the Judge may consider appropriate and specify the date and time of its return and the Judge before whom the return is to be made.

(2) The return date shall be fixed for not more than 5 working days after the service on the respondent, unless the Judge is satisfied that there are exceptional circumstances to fix any other date.

(3) The service of the writ shall be by personal service, except where personal service is not practicable or where the writ is directed to the superintendent of a prison, in which case service shall be effected by leaving the writ with an employee or agent of the respondent.

(4) Where the writ is directed to more than one person, the original writ shall be served on the first named respondent, and copies served on each of the other respondents in the same manner.

Return of writ

10.(1) Any person to whom a writ of habeas corpus is directed shall produce the person alleged to be detained before the Judge on the date and time specified in the writ.

(2) Any person to whom a writ of habeas corpus is directed shall also file a statement before the Judge, on or before the return date, stating all the reasons of the detention of the applicant.

(3) If for any reason it is not possible for a person to comply with a writ of habeas corpus, the person shall file a statement before the Judge explaining why it is not possible to comply with the writ.

(4) The statement may be substituted or amended at any time with leave of the Judge.

Determining legality of detention

11.(1) Where—

(a) the person detained is produced before the Judge in accordance with the writ of habeas corpus; or

(b) the respondent appears before the Judge for the purpose of justifying the detention,

all affidavits or statements directed to the circumstances of the detention shall be exchanged before the commencement of the hearing;

(2) Where the person detained is produced before the Judge and the respondent appears before the Judge for the purpose of justifying the detention the statement made under rule 10(2) shall be heard first.

(3) In a hearing of an application under these rules, the person representing the applicant shall be heard first.

(4) If the Judge is satisfied that the detention is lawful and proper, the application shall be dismissed and any writ discharged.

(5) If the Judge is not satisfied that the detention is lawful and proper, the Judge shall order the immediate release of the person detained from the detention, which shall be a sufficient warrant to any public officer for the release of the person detained.

Prohibition on re-detention

12. A person who has been released from the detention in accordance with an order made under these rules shall not be detained again on the same or similar grounds unless there has been a material change in the circumstances and the evidence revealed in support thereof.

Prohibition on re-application

13. Notwithstanding anything in these rules, where an application under these rules has been made by or on behalf of a person, no further application under these rules in respect of that person shall be made or entertained on the same or similar grounds unless there has been a material change in the circumstances and the evidence revealed in support thereof.

Offence and penalty

14. A person who being aware that an application is pending under these rules —

(a) removes or attempts to remove the person alleged to be detained from the jurisdiction of the Supreme Court;

(b) willfully fails to comply with a writ of habeas corpus or an order to appear to justify the legality of a detention; or

(c) having been released under these rules, breaches any condition of the order,

commits an offence and shall on conviction be liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding SCR20,000.

Costs

15. The Judge may in a matter, where the Judge considers it necessary and appropriate, for reasons to be recorded in writing, award any cost in respect of an application under these rules in accordance with sections 146 to 151 of the Criminal Procedure Code.

MADE this 23rd day of March, 2015.

DURAIKANNU KARUNAKARAN
ACTING CHIEF JUSTICE