

Suresh v. Canada (Minister of Citizenship and Immigration), 2003 FCT 746 (CanLII)

Date: 2003-06-13
Docket: DES-3-95
Parallel citations: (2003), 237 F.T.R. 285
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[Reflex Record](#) (noteup and cited decisions)

Date: 20030610

Docket: DES-3-95

Neutral citation: 2003 FCT 746

BETWEEN:

MANICKAVASAGAM SURESH

Applicant

- and -

THE MINISTER OF CITIZENSHIP & IMMIGRATION

and SOLICITOR GENERAL FOR CANADA

Respondent

REASONS FOR ORDER

TEITELBAUM, J.:

[1] This is an application by the Applicant, Manickavasagam Suresh, hereinafter referred to as Suresh, in writing, pursuant to Rule 369 of the *Federal Court of Canada Rules*, for an Order varying the terms of Suresh's release from detention pursuant to section 84(2) of the *Immigration and Refugee Protection Act*.

[2] Section 84(2) of the Act states:

84.(2) Judicial release - A judge may, on application by a foreign national who has not been removed from Canada within 120 days after the Federal Court determines a certificate to be reasonable, order the foreign national's release from detention, under terms and conditions that the judge considers appropriate, if satisfied that the foreign national will not be removed from Canada within a reasonable time and that the release will not pose a danger to national security or to the safety of any person.

[3] The grounds for the present application, as stated in the application are:

- (A) The Applicant was detained under section 40.1 of the *Immigration Act*. He was released from detention pursuant to an order of this Court, dated March 23, 1998, which was later amended in part.
- (B) Mr. Suresh is seeking to vary the terms of the order authorizing his release from detention, as set out and explained in his affidavit in support of this motion.
- (C) Mr. Suresh is abiding by the present terms and conditions.

[4] In his Affidavit sworn on May 8, 2003 Suresh states:

2. I am presently at liberty in Canada pursuant to an order for my release from detention under the *Immigration Act* issued by this Court on March 23, 1998 and subsequently amended.

3. The conditions of my release include:

a. That I report once a week to the immigration reporting centre, which I have been doing since my release.

b. That I reside at the home of my fiancée, Jayaraman Sivaswamy (nee Ramalakshamy) at her home at 5 Greystone Walk, Apartment 1711, Toronto. The original order of this Court required that I live with my friend, Xavier Noble Arasaratnam, but I sought and received permission to change my address.

c. That \$40,000 cash be deposited with the Government of Canada as a bond for my release. This bond was posted when I was released in March, 1998. The money was posted by a number of my friends in the community, each putting up an amount that they had in savings or were able to obtain for this purpose.

...

5. I am seeking to vary the condition that I live at a particular address with Ms. Sivaswamy to a condition that enables an immigration officer to receive a change of address notice from me. Ms. Sivaswamy and I are encountering some difficulties in our relationship, which we are trying to resolve, as we care a great deal about each other. We have more or less decided that it would be better for us to separate temporarily at least while we try to work out our relationship. As such I need to obtain permission to live elsewhere. I would like to live with Yogarajah Seevaratnam at 678 Ashprior Avenue, Mississauga, Ontario L5R 3N7. Mr. Seevaratnam is one of my close friends who appeared on my behalf at my hearing before this Court. As I do not know what will happen with my relationship with Ms. Sivaswamy and whether we will live together again, I would like to be able to have the condition of my release changed to enable me to report a change of address to an immigration officer before I change address, rather than having to seek permission of this Court through a formal motion to change my address. It is my understanding that individuals released from an immigration hold by an Immigration Member are normally subject to a condition that the person live at a particular address and/or with a particular person, and that if this is to change, the person report this in writing to an immigration officer at the reporting centre before changing addresses. I would like to have my release order varied to allow for this to happen.

6. Further, I am seeking to vary the condition that I report weekly to an immigration officer, to one which allows me to report once a month and in any event to apply to an immigration officer to change the reporting requirements. Again it is my understanding that persons released from immigration holds are normally subject to a condition that they report on a regular basis and that if this reporting condition is to be changed it be done on application to an immigration officer.

7. I would like to change the reporting requirement from once a week to once a month, as I have been reporting once a week since I was released from detention in March, 1998, for over five years. I report weekly on Thursdays between 9:00 and 11:00 a.m. to the Immigration Reporting Centre at the Greater Toronto Enforcement Centre, 6900 Airport Road. It takes me about two hours to get to this office and about two hours to return to the city. I do not have a car.

8. Further, the weekly reporting has seriously hampered me in seeking full time employment. I now am working at a part time job, but would like to obtain a full time job, which is very difficult as I have to report to the GTEC office on Thursdays, a weekday. At least reporting less often in person would not interfere with employment to the same extent and I would have a better chance at obtaining full time paid employment. I have completed computer courses. I am competent in hardware configuration and in networking. I completed the Microsoft Certified System Engineer program and did very well, passing with an average of 90%. I believe that if I were not hampered by the weekly day time reporting, I would have a better chance of being able to use the skills that I have acquired, in paid employment.

9. I had made an application to this Court in January, 2001 to change this condition and my request was refused. However, my circumstances have changed. It is now five years that I have been reporting once a week. Further, at the moment I am not at risk of being removed from Canada. I was successful in my appeal before the Supreme Court of Canada in January, 2002, in resisting removal to Sri Lanka. I have not heard anything further from immigration officials since that time.

10. I would like the reporting condition changed to permit an immigration officer to vary the reporting requirements in any event. I could make the application to an officer then to vary the condition to once a month rather than have this Court change it, if this is preferable to the Court. Otherwise, this Court could change the reporting requirement to once a month, if it believed that this was appropriate.

11. I would like the condition of my release that \$40,000 be held by the Government to be cancelled in order to be able to have the individuals who have put up the money have it returned to them. They are ordinary people who could use the money. No one anticipated in March, 1998 that the money could be held up for this long, with no time limit on its return. I know, as a number of people have contacted me or my lawyer asking about the money, that there are people who really need to have the money returned. There remains a \$150,000 conditional bond put up by my friend, Xavier Noble Arasaratnam, I am not seeking to change this aspect of the release order. I believe, because I remain a very close friend of Mr. Arasaratnam, that this bond would continue to accomplish the same purpose of the cash bond of \$40,000, as I would not breach the terms and conditions of my release and cause such a great hardship to Mr. Arasaratnam.

12. Given the above, I am seeking to vary the order for my release. I am suggesting the following wording, adapted from the release form used by Immigration Members when ordering the release of individuals held by immigration authorities. My counsel has shown me a copy of this standard order:

- a. Condition 1 be deleted, i.e. that \$40,000 cash be paid to the Government of Canada.
- b. Condition 3 be changed to: *Suresh, while out of detention, shall report once a month to the Canada Immigration Reporting Centre at the Greater Toronto Enforcement Centre, 6900 Airport Road, Entrance 2B, Mississauga, Ontario at a time and on a day as determined by an immigration officer; An officer in writing may cancel this condition, change the reporting location, or reduce the reporting frequency.*
- c. Condition 4, 5 and 6 be changed to: *Suresh shall reside with Yogarajah Seevaratnam at 678 Ashprior Avenue, Mississauga, Ontario L5R 3N7. Before changing residence he must report any such change in person to an immigration officer at the Canada Immigration Reporting Centre, at the Greater Toronto Enforcement Centre, 6900 Airport Road, Entrance 2B, Mississauga, Ontario, or at such other location as specified by an immigration officer in writing.*

[5] In his written submissions Suresh is of the belief that the conditions of release that he wishes to have varied are "appropriate and reasonable". He states that he has been reporting weekly since his release in March, 1998 and that this has caused him difficulty to find full time employment and this because "Weekly reporting is on Thursdays between 9:00 and 11:00 a.m. It takes Mr. Suresh about two hours to get to the reporting centre and about two hours to return from it".

[6] Suresh states that he is amenable to continuing to let immigration officials know where he is but believes, "this does not need to be done in person on a weekly basis".

[7] With regard to Suresh's request to change his place of residence, Suresh now resides with his fiancée and states, "There are problems with this relationship" and he would like to relocate to another home, the home of a friend, Yogarajah Seevaratnam, who resides at 678 Ashprior Avenue, Mississauga, Ontario, L5R 3N7. Suresh also requests that in the event Suresh wishes to change his residence, he be permitted to do so and to report the change to an immigration officer rather than "be formally by motion seek permission of this Court to change residence "as" this is a normal condition of release for persons released by Immigration Members..."

[8] As for Suresh's request to have the cash deposit of \$40,000.00 released, he states that ordinary individuals deposited the money to secure Suresh's release and that the money has been on deposit for more than five years which causes a hardship for some of the individuals who may have deposited the monies.

[9] Suresh fails to say who are the individuals who have deposited the said sum of money nor why the deposit causes some of them a hardship.

[10] There is also no Affidavit from the individuals to confirm this fact.

[11] The Respondent in its submission states that the Respondents are in partial agreement with Suresh's proposed variation as to his residence so that Suresh be permitted to reside with Yogarajah Seevaratnam but "do not consent to an Immigration Officer being given the authority to vary the address condition".

[12] The Respondents also "oppose any of the other suggested variations" requested by Suresh in the present application.

[13] After reading the submissions of counsel for Suresh, the submissions of the Respondents and the Reply by Suresh's counsel, I am satisfied that other than the request to change his residence, after formal notification to Immigration, the request to vary any other condition of release is denied.

[14] On March 19, 1995, after considering an application by Suresh for his release from detention, I granted his request for release as a result of the Respondents failure to remove Suresh from Canada. I also felt, at that time, "that Suresh will not be removed from Canada within a reasonable period of time".

[15] In fact, it is now June, 2003, and Suresh still remains in Canada despite the fact that it was on August 29, 1997 that I determined that reasonable grounds existed for the Respondents to have issued a certificate pursuant to section 40.1 of the former *Immigration Act*, now section 80 (1) of the *Immigration and Refugee Protection Act*.

[16] As I said in my reasons for decision of November 14, 1997 and I state, once again, that I had "reasonable grounds to believe that Suresh was and is a member of the LTTE (the Tamil Tigers)) as he, from the time of his being very young, partook in LTTE activities...and then becoming part of the LTTE executive

and finally, at the request of the LTTE, travelled to various countries, including Canada, to lead the World Tamil Movement which, it can reasonably be concluded, is part of the LTTE organization or is, at the very least, an organization that strongly supports the activities of the LTTE".

[17] Council for Suresh, in her reply, at paragraph 8 states:

8. The Respondents submit in paragraph 17 of their Reply submissions that the Supreme Court of Canada judgement did not displace the conclusion of this Court that Mr. Suresh is a member of a terrorist organization and is inadmissible to Canada. In reply it is submitted:

(i) Justice teitelbaum did not conclude that Mr. Suresh is a member of a terrorist organization. He concluded that the conclusion of the Ministers was reasonable that there were reasonable grounds to believe that Mr. Suresh is or was a member of an organization for which there were reasonable grounds to believe engaged or is engaging in terrorism. All the "reasonableness" standards applied by the Court and the Ministers are on the basis of the facts alleged possibly being true and the test possibly being met.

(ii) The Supreme Court (and the Federal Court of Appeal, as well) used a different test for terrorism than that used by Justice Teitelbaum. While Justice Teitelbaum included attacks on military targets in his definition of 'terrorism', both the Supreme Court and the Court of Appeal adopted a much narrower definition. Justice Teitelbaum's decision stands as it is not subject to appeal, even though he used an incorrect definition of 'terrorism'.

(iii) Whether or not Justice Teitelbaum's decision was correct, it is apparent that Mr. Suresh has a 'track record' of some five years of compliance with terms and conditions.

[18] After reading what I said on attempting to define the term, "terrorist" or "terrorism" in my decision of November 14, 1997 and what I have read in the decision of the Supreme Court, I am satisfied that the Supreme Court has not substantially, changed the definition of "terrorist" or "terrorism".

[19] I said and I, once again state, that it is an act of terrorism to indiscriminately kill innocent people by placing a bomb on a civilian bus or in a market or by shooting a member of parliament only because the member's view is different than that of the LTTE as the evidence disclosed.

[20] In any event, I determined in November of 1997 that there existed more than sufficient evidence to convince me that it was reasonable for the Ministers to have issued a certificate indicating that Suresh was a member of the LTTE which, as I said, one can reasonably conclude was a terrorist organization.

[21] I have not been given any evidence to convince me that my reasoning was incorrect.

[22] When I decided to release Suresh from detention I placed, what I considered were strict conditions for his release as I was concerned that if ordered to be removed from Canada, to Sri Lanka or elsewhere, Suresh would not voluntarily appear for removal. Thus I considered a cash deposit of \$40,000 plus a surety of \$150,000 as appropriate.

[23] I am well satisfied that the condition of reporting, in person, once per week to immigration is not an onerous condition of being released from detention in the circumstances of the case before me.

[24] Therefore, the application to vary the terms of Suresh's release from detention is denied with the exception that Suresh may change his place of residence and to reside with Yogarajah Seevaratnam at 678 Ashprior Avenue, Mississauga, Ontario and must, immediately upon changing his residence, report same to immigration.

"Max M. Teitelbaum

J. F. C. C.

Calgary, Alberta

June 13, 2003

FEDERAL COURT OF CANADA

TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: DES-3-95

STYLE OF CAUSE: MANICKAVASAGAM SURESH

v. THE MINISTER OF CITIZENSHIP

& IMMIGRATION and SOLICITOR

GENERAL OF CANADA

MOTION DEALT WITH IN WRITING

Pursuant to Rule 369 of the *Federal Court of Canada Rules*

REASONS FOR ORDER: Teitelbaum, J.

DATED: June 13, 2003

WRITTEN REPRESENTATIONS:

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Mr. Toby Hoffman FOR RESPONDENT

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