

HCP(MD) No.366 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on	27.08.2026
Pronounced on	08.09.2026

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

and

THE HONOURABLE MR.JUSTICE N.GUNASEKARAN

HCP(MD) No.366 of 2026

and

Crl.M.P(MD) No.15820 of 2026

Subash Chandra Kapoor

... Petitioner

Vs.

1. The Union of India
Rep. by the Secretary
Ministry of Home Affairs,
Government of India
North Block, New Delhi

2. The Deputy Secretary
Ministry of Home Affairs,
Government of India,
North Block, New Delhi.

3.The State of Tamil Nadu
Rep. by its Home Secretary,
Government of Tamil Nadu,
Secreatarit, Chennai- 600 009



HCP(MD) No.366 of 2026

4. The Superintendent of Police
Idol Wing,
Chennai

5. The Superintendent,
Central Prison,
Trichy- 20

6. The Union of India
Rep.by
The Secretary,
Ministry of External Affairs,
Government of India
South Block
New Delhi

... Respondents

(R6 *suo motu* impleaded as per the order of this Court
dated 03.06.2026)

Prayer:-Petition filed under Article 226 of the Constitution of India seeking a writ of habeas corpus directing the respondents to produce the person or body of the petitioner before this Court and direct the petitioner's immediate release from illegal custody and order the petitioner's repatriation to his native country.

For Petitioner : Mr.A.Manoj Kumar

For R1 and R2 : Mr. M.Karthikeya Venkatachalapathy

Deputy Solicitor General of India(In charge)

For R3 to R5 : Mr.R. John Sathyan,

State Public Prosecutor

Assisted by Mr.D.Venkatesh

Counsel for State of Tamil Nadu(Cr1.Side)

Mr.A.Thiruvadi Kumar, *Amicus Curiae*

For Intervenor : Mr.V.Elanchezhiyan



HCP(MD) No.366 of 2026

ORDER

A.D.JAGADISH CHANDIRA,J.

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The instant Habeas Corpus Petition is filed to direct the respondents to produce the person or body of the petitioner before this Court and direct the petitioner's immediate release from illegal custody and order the petitioner's repatriation to his native country.

2. The case of the petitioner is as under :

2.1. The petitioner who is a septuagenarian is an American citizen. He was extradited from Germany to India on 13.07.2012 specifically for Crime No.65 of 2008 registered by the Udayarpalayam Police Station for offences under Section 457 and 380 of IPC. The extradition was governed by the Treaty between the Republic of India (hereinafter referred to as "India") and the Federal Republic of Germany (hereinafter referred to as "Germany") on Extradition (hereinafter referred to as "the Extradition Treaty").

2.2. India provided a solemn undertaking dated 15.03.2012 to Germany requesting for his extradition in Crime No.65 of 2008 on the file of the Udayarpalayam Police Station stating the Government of India assures that the extradited person will not be punished, limited in his



HCP(MD) No.366 of 2026

personal freedom or be prosecuted by measures that could also be taken in his absence, in India without the consent of Germany for any reason existing before his transfer, except for the deeds that give reason for the request for extradition.

2.3. Article 19 of the Extradition Treaty specifically provides that a person extradited under the Extradition Treaty shall not be detained, tried or subjected to any restriction of personal liberty for any offence committed before extradition, except for an offence for which he was extradited or any other extraditable offence, in respect of which, the extraditing state has consented.

2.4. The petitioner was tried for the case in Crime No.65 of 2008 and was convicted by the Additional Chief Judicial Magistrate, Kumbakonam, on 01.11.2022 and sentenced to undergo ten years imprisonment for the extradited offence and he has completed the sentence for the extradited offence having been granted set off for the period of his detention from 30.11.2011 to 21.10.2022. According to the custody certificate dated 24.11.2024 issued by the fifth respondent, the date of release for his conviction was on 22.02.2023, implying that he has already served out his sentence for the extradited offence.



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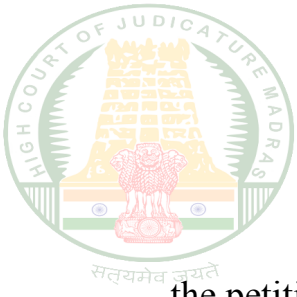
HCP(MD) No.366 of 2026



2.5. Despite completion of his sentence for the extradited offence, he continues to be in detention for other pending cases which is in direct violation of Section 21 of the Extradition Act, 1962.

2.6. Though the Custody Certificate and the Court records show that he is currently held in connection with the other pending cases, no consent has been obtained till date for detaining him in respect of those pending cases.

2.7. Be that as it may, the petitioner had earlier questioned his remand in respect of Crime No.133 of 2008 on the file of the Vikramangalam Police Station by filing H.C.P. No.1794 of 2012 before this Court. The said habeas corpus petition was dismissed by this Court by order dated 01.02.2013. Thereagainst, the petitioner filed S.L.P. (Crl.) No. 15606 of 2024 before the Supreme Court which was disposed of vide order dated 15.09.2025 by granting liberty to the petitioner to approach the appropriate forum with an observation that his legal contentions under the provisions of the Extradition Act, 1962 and other legal contentions, shall be considered on their own merits and in accordance with law.



HCP(MD) No.366 of 2026

2.8. Coming to the case on hand, the main bone of contention of the petitioner is that his further detention and continuation of proceedings in respect of other pending cases without obtaining the consent of Germany is illegal and hence, he has to be set at liberty forthwith.

3. A status report by way of an affidavit has been filed on behalf of the Ministry of External Affairs, newly impleaded sixth respondent herein.

3.1. As per the status report, the petitioner was extradited from Germany to India for his trial in connection with Crime No. 65 of 2008 on the file of the Udayarpalayam Police Station, in pursuance of the Extradition Treaty and the trial was conducted by the Additional Chief Judicial Magistrate, Kumbakonam, whereby, he was convicted and sentenced for ten years. The sentence of imprisonment has been served out by the petitioner.

3.2. The Ministry of Home Affairs (respondents 1 and 2 herein), *vide* letter dated 06.07.2023, had forwarded the request of Tamil Nadu Government to the Ministry of External Affairs seeking consent to prosecute the petitioner in four cases. The Ministry of External Affairs, *vide*



HCP(MD) No.366 of 2026

Memorandum dated 20.12.2023, had conveyed to the Tamil Nadu Government that Germany has not consented to the proposed extension of the prosecution of the petitioner and therefore, as per the Principle of Specialty, further prosecution in India is thus excluded.

3.3. Further, the Ministry of Home Affairs had forwarded proposals of the Tamil Nadu Government for obtaining consent from Germany for prosecuting the petitioner in ten additional cases, out of which, request has been rejected in respect of four cases by Note Verbale dated 01.12.2023 and consent in respect of other cases is awaited.

3.4. Meanwhile, extradition request dated 27.09.2021 was received from the United States of America (hereinafter referred to as “the USA”) for extradition of the petitioner and that as per Article 19 (i.e. Rule of Specialty) of the Extradition Treaty, India has to seek consent of Germany before extraditing the petitioner to the USA. Further, the Ministry of External Affairs has received a Note Verbale dated 30.04.2026 from German Foreign Office reiterating that any further prosecution is not permissible under the Principle of Specialty.



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HCP(MD) No.366 of 2026

3.5. Even if the additional ten domestic cases are quashed and the petitioner is released from detention, he has to be produced before the Special Court for matters relating to the Extradition Act, 1962 (i.e. Additional Chief Judicial Magistrate – 01, Patiala House Court, New Delhi) in order to initiate the extradition proceedings under Section 5 of the Extradition Act, 1962, in respect of the extradition request received from the USA.

4. A counter affidavit has been filed by the Superintendent of Police, Idol Wing, Chennai, the fourth respondent herein, on his behalf and also on behalf of the Government of Tamil Nadu, the third respondent herein. To avoid prolixity, it would suffice to give the sum and substance of the said counter affidavit as under:

4.1. The petitioner is a fugitive criminal and an international art trafficker/smuggler involved in selling the cultural heritage of our nation with false and fabricated provenances. His *modus operandi* is visiting selected ancient temples, hatching a criminal conspiracy with the local thieves and his accomplices to steal antique idols and by fabrication of false provenances, smuggle the stolen idols abroad. The petitioner and his



HCP(MD) No.366 of 2026

accomplices have squandered valuable cultural heritage of our country. The petitioner is involved in ten other cases registered within Tamil Nadu, out of which, investigation has been completed in four cases and he has been charge sheeted and investigation is pending in the remaining six cases. Though the trial in the case for which the petitioner was extradited has been completed and he has also undergone the sentence of imprisonment therefor, a consent request in respect of prosecution in respect of the said ten cases has been sent and the consent thereof is awaited in respect of six cases, whereas, the consent has been denied in respect of remaining four cases.

4.2. Extradition of the petitioner from Germany to India is in respect of the similar offences committed by the petitioner in respect of which cases have been registered on the file of various police stations and not restricted to the case in Crime No.65 of 2008 on the file of the Udayarpalayam Police Station alone.

4.3. There is neither any violation of Section 21 of the Extradition Act, 1962, nor any contravention of the Doctrine of Specialty. Section 21 of the Extradition Act, 1962, does not impose an absolute bar but only a conditional restriction. Further, it permits prosecution for a lesser or related



offences and the present case falls squarely within the permissible exemption.

4.4. The petitioner has earlier challenged the remand order in Crime No.133 of 2008 on the file of Vikramangalam Police Station in HCP No.1794 of 2012 and the same was dismissed by this Court. Aggrieved by the dismissal, SLP (Crl.) No. 15606 of 2024 was filed by the petitioner and the same came to be disposed on 15.09.2025 and hence, the detention of the petitioner is not illegal and thus, the present habeas corpus petition is not maintainable.

5. An intervening petition has been filed in Crl.M.P(MD) No. 15830 of 2026 by one N.Savithri Narayanasamy and two others and the crux of the petition is that it has been filed by them in their capacity as victims/complainants, devotees and next friend of the stolen temple deities (i.e. idols) which are the subject matter of the criminal cases pending against the petitioner. Further, their objection to the instant habeas corpus petition is that though the extradition is in respect of only one case, the petitioner is the kingpin (i.e. overseas funder) who, along with the local persons, entered into a larger criminal conspiracy to commit burglary and took antique idols from various temples which are the national heritage of



HCP(MD) No.366 of 2026

India. All the cases are not stand alone cases and on the contrary, they are inter linked with one another establishing a single continuing conspiracy in all the eleven cases and therefore, the detention of the petitioner is not illegal.

6. After hearing the parties at reasonable length, given the sensitivity and seriousness involved in the matter, this Court, by order dated 08.07.2026, appointed Mr.A.Thiruvadi Kumar, learned counsel as *Amicus Curie* to assist the Court.

7. This Court, after hearing the counsel on appearing for the petitioner, respondents and the intervenor, for the sake of the appreciating the case of the petitioner in its entirety, by an order dated 19.08.2026, directed the learned Senior Central Government Standing Counsel to produce the entire files relating to the proceedings bearing No. 25015/4/2012/Legal Cell/Ministry of Home affairs /Government of India dated 16.03.2012 and the connected files of the Ministry of External Affairs/Government of India in the matter of extradition of the petitioner.

8. Pursuant to the directions of this Court dated 19.08.2026, a typed set of papers with inputs on behalf of the Ministry of Home Affairs



were produced along with its annexures (i.e. Annexure-A to Annexure-L) before this Court. The apposite portions of the inputs given on behalf of the

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Ministry of Home Affairs are extracted below for ease of reference:

“ 2. That as per the Allocation of Business Rules, the Ministry of External Affairs (MEA) is the nodal Ministry for dealing with extradition matters. The Internal Security-II (IS-II) Division of the Ministry of Home Affairs (MHA) deals with the assurances related issues

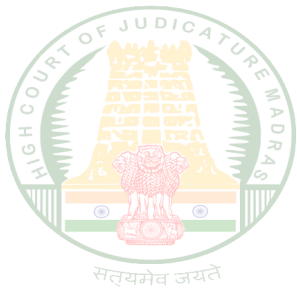
3. That the extradition request pertaining to Shri Subhash Chandra Kapoor was processed by the concerned Law Enforcement Agency to the German authorities through MEA (Annexure-A)

4. That as regards assurances, the German Foreign Office vide their Note Verbal dated 18.01.2012 had sought assurances from the Government of India, inter alia, with regard to the Rule of Specialty, non-transfer to a third country, the right of the person concerned to leave India, pre-extradition detention, protection against torture or ill-treatment, detention conditions and consular access. (Annexure-B)

5. That on the basis of the assurances furnished by the Government of Tamil Nadu vide their letter dated 15.03.2012, MHA conveyed the sovereign assurances to the German Foreign Office through the Ministry of External Affairs on 16.03.2012. (Annexure-C)

6. That the Government of Tamil Nadu furnished further medical assurances in respect of the person concerned on 28.05.2012. The said assurances were subsequently conveyed by MHA on 09.07.2012 to the German Foreign Office in continuation of the assurances already conveyed on 16.03.2012. (Annexure-D)

7. That on 12.06.2019 a meeting was held in MHA to deliberate upon the matter, particularly the prolonged pendency of the trial in Crime No. 65/2008. It was, inter-alia, decided that the German side was to be informed that there would be no violation of the Rule of Specialty which the Government of Tamil Nadu was to furnish nation in writing.



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HCP(MD) No.366 of 2026

8. Consequently, a D.O.letter dated 24.09.2018 from the then Union Home Secretary was addressed to the Chief Secretary. Consequente, a D.D. letter dated 24.09.2019 from the Government of Tamil Nadu, requesting expeditious response/action in the matter. Annexure-E)

9. That the Chief Secretary, Government of Tamil Nadu vide their D.O. letter dated 01.10.2019, conveyed the following position: (Annexure-F)

(I). With regard to the Rule of Specialty, the State Government assured that the Rule of Specialty would not be violated and that Shri Subhash Chandra Kapoor would not be tried for any offence other than Crime No. 65/2008, for which clearance had been obtained from the German Federal Government through MEA and MHA

(ii). The Government of Tamil Nadu assured that it would extend its fullest cooperation to the Government of India and honour all commitments made in this regard.

10. That the Tamil Nadu Government vide their letter dated 05.01.2023 had forwarded the proposal request seeking consent from Germany in another 04 cases against Subhash Chandra Kapoor (Annexure-G). This Ministry vide letter dated 24.01.2023 forwarded the consent requests of Govt. of Tamil Nadu to MEA for seeking consent of German Authorities to prosecute Mr. Subhash Chandra Kapoor in the said four cases. (Annexure-H)

11. MEA vide OM dated 20.12.2023 had intimated that Foreign office of Germany has informed that the Federal Republic of Germany does not agree to the proposed extension of the prosecution of Kapoor. Under the Principle of specialty in the extradition of Kapoor from Germany to India, further prosecution in India is thus excluded (Annexure-I). The State of Tamil Nadu was accordingly apprised the same vide this office letter dated 02.01.2024 (Annexure-J).

12. That at the request of MEA, the Government of Tamil Nadu furnished to MHA the factual and legal status of all Ten (10) pending cases on 23.07.2026, along with justification for the continued detention of Shri Subhash Chandra Kapoor, and the said consent proposal was forwarded by MHA to the German authorities (Annexure-K). The same was forwarded to MEA vide letter dated 27.07.2026 (Annexure-L).



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HCP(MD) No.366 of 2026



9. The crux of the submissions made by the learned *Amicus*

Curiae is as follows:

9.1. The legal contentions raised in the present habeas corpus petition revolves around Section 21 of the Extradition Act, 1962, Article 19 of the Extradition Treaty, Article 51 of the Constitution of India and the Vienna Convention on Law of Treaties.

9.2. Extradition of the petitioner is case-centric and not offence-centric. The petitioner was extradited only in connection with Crime No.65 of 2008 on the file of the Udayarpalayam Police Station. He was tried and convicted and sentenced to undergo ten years of imprisonment which sentence has been served out by him. Though the other cases pending are for similar offences, they cannot be brought within the definition of lesser offences.

9.3. The Rule of Specialty governs the consequences of his extradition. Article 19 of the Treaty expressly protects him against unauthorized detention, trial or other restriction of liberty in respect of pre-extradition offences. Germany has expressly refused the proposed extension



HCP(MD) No.366 of 2026

for further prosecution of the petitioner and the State of Tamil Nadu had expressly assured that the Rule of Specialty would not be violated and that the petitioner would not be tried for offences other than Crime No.65 of 2008. Fresh requests for consent, if any, are still pending and a pending request for consent cannot be equated with consent.

9.4. The Supreme Court, *vide* order dated 15.09.2025 in S.L.P. (Crl.) No.15606 of 2024, having permitted the petitioner to raise the legal contentions under the provisions of Extradition Act, 1962, before the appropriate forum and further Article 21 of the Constitution of India being a fundamental right which equally applies to a foreigner, there cannot be a plea of *res judicata*.

10. Relying on the judgment of the Supreme Court in **Abu Saleem Abdul Kayyum Ansari v. State of Maharashtra [2022 SCC Online SC 852]** and certain other decisions, the learned Amicus Curiae would submit that India having given a solemn assurance to Germany and having accepted the same in terms of the Extradition Treaty, is bound to act in terms of the aforesaid assurance and hence, the petitioner has to be returned back to Germany. He would ultimately contend that the continued detention of the petitioner in prison, being detention without any authority



HCP(MD) No.366 of 2026

of law, the petitioner has to be produced by the second respondent before the Special Court for matters relating to Extradition Act, 1962 (i.e. Additional Chief Judicial Magistrate – 01, Patiala House Court, New Delhi) for transferring him back to Germany.

11. Heard Mr.A.Manoj Kumar, learned counsel appearing for the petitioner, Mr.Karthikeya Venkatachalapathy, Deputy Solicitor General appearing for the respondents 1 and 2, Mr.R. John Sathyan, learned State Public Prosecutor assisted by Mr.D. Venkatesh, learned counsel appearing for the State of Tamil Nadu (Crl.Side) for respondent 3 to 5, Mr.V.Elanchezhian, learned counsel appearing for the intervenor and Mr. A.Thiruvadi Kumar, learned Amicus Curiae and perused the entire materials available on record, including the inputs filed on behalf of the Ministry of Home Affairs.

12. The present habeas corpus petition raises an important question concerning the continued detention of a person extradited to India from Germany. The petitioner seeks his release on the ground that he having undergone the sentence imposed upon him in the case in respect of which he was extradited, he cannot be further detained in connection with other offences allegedly committed prior to his extradition without the consent of

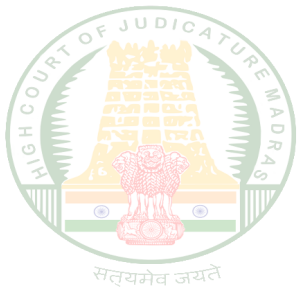


HCP(MD) No.366 of 2026

Germany and his continued detention in prison even after his serving out of sentence in respect of the case for which he was extradited from Germany, is illegal and *ergo*, he has to be set at liberty forthwith.

13. The essential facts that the petitioner was extradited from Germany to India in connection with Crime No.65 of 2008 on the file of Udaiyarpalayam Police Station, he was thereafter tried in C.C.No.1 of 2016 on the file of the Additional Chief Judicial Magistrate, Kumbakonam and convicted and sentenced *vide* judgment dated 01.11.2022 and that the petitioner has served out the sentence imposed upon him in the said case, are not in controversy.

14. The short, yet, interesting and important question that falls for consideration of this Court in the case on hand is whether, after completion of the sentence in the case for which the petitioner was surrendered, can he continued to be detained in connection with other offences allegedly committed before his extradition. To put it differently, whether his extradition is case-centric or offence-centric.



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HCP(MD) No.366 of 2026

15. For the purpose of deciding the aforesaid question, it is felicitous to advert to the relevant Article under the Extradition Treaty and the relevant provisions under the Extradition Act, 1962.

“Article 19 of the Extradition Treaty:

Rule of Speciality

(1). Without prejudice to paragraph 3 below, a person extradited under this Treaty shall not:

1. in the Requesting State be detained or tried, or be subjected to any other restriction of his personal liberty for any offence committed before his extradition, other than in respect of:

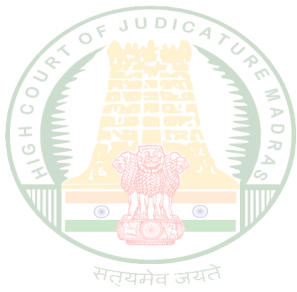
(a). an offence in respect of which he was extradited, or another offence in respect of which he could be convicted based on the proven facts used to support the request for his extradition, or

(b). another extraditable offence in respect of which the Requested State has consented to his or her being so detained or tried, or subjected to any other restriction of his or her personal liberty; or

2. be detained in the Requesting State for the purpose of his or her extradition to a third State, or be re-extradited to such a State, unless the Requested State consents to this.

(2). A request for the consent of the Requested State under this Article shall be accompanied by all the relevant documents specified in Article 12 and by a court record of statements made by the person extradited. Paragraph 1 of Article 13 shall apply mutatis mutandis.

(3). Paragraph 1 shall not apply if the person extradited, although having had an opportunity to leave the territory of the Requesting State, has not done so within 45 days of his or her final release, or has returned to that territory after leaving it. Release on parole or probation without an order restricting the freedom of movement of the extradited person shall be deemed equivalent to final release.



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HCP(MD) No.366 of 2026

Section 21 of the Extradition Act, 1962:

Accused or convicted person surrendered or returned by foreign State not to be tried for certain offences [Substituted by Act 66 of 1993, Section 12, for Section 21 (w.e.f. 18.12.1993)]. Whenever any person accused or convicted of an offence, which, if committed in India would be an extradition offence, is surrendered or returned by a foreign State, such person shall not, until he has been restored or has had an opportunity of returning to that State, be tried in India for an offence other than

(a). the extradition offence in relation to which he was surrendered or returned; or

(b). any lesser offence disclosed by the facts proved for the purposes of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made; or

(c). the offence in respect of which the foreign State has given its consent.

(emphasis supplied by us)

16. Section 21 of the Extradition Act, 1962, embodies the Rule of Specialty. A person surrendered or returned by a foreign State cannot, subject to the exceptions contained therein, be tried in India for an offence other than the extradition offence or an offence in respect of which the foreign State has not given its consent. A bare reading of this provision makes it very limpid that the surrender of a fugitive is, therefore, not an unrestricted surrender enabling the requesting State to proceed against him for every offence allegedly committed prior to his extradition. In other words, the surrendering State does not give a carte blanche to the requesting State to deal with the fugitive in a manner as the latter deems fit.



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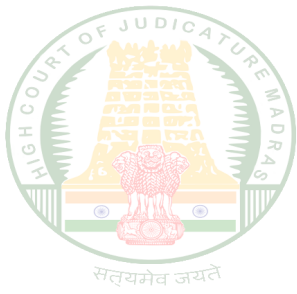
HCP(MD) No.366 of 2026



17. Further, the Rule of Specialty has a further and express dimension under Article 19 of the Extradition Treaty. Article 19 provides that a person extradited under the Extradition Treaty shall not, in the Requesting State, be “detained or tried, or be subjected to any other restriction of his personal liberty” for an offence committed prior to extradition, except in the circumstances recognized by the Extradition Treaty. (emphasis supplied)

18. It is pertinent to note that the significance of Article 19 of the Extradition Treaty lies in its express reference not only to trial but also to detention and every other restriction upon personal liberty. Therefore, the question in the present petition is not confined to whether the petitioner may ultimately be tried in the other pending cases as well. The immediate question is whether his present and continuing detention in connection with such pre-extradition offences is legally permissible.

19. It is to be noted that the materials placed before this Court shows that Germany, by Verbale Note under reference 506-531.00/35098 IND addressed to the Ministry of External Affairs, Government of India, has stated as follows:



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HCP(MD) No.366 of 2026

“The Federal Republic of Germany does not agree to the proposed extension of the prosecution of Kapoor. Under the Principle of Specialty in the extradition of KAPOOR from Germany to India, further prosecution in India is thus excluded.”

20. Further, by a Verbale Note under reference 506-531.00/35089

IND, Germany has reiterated the/its earlier stand. The relevant paragraphs of the said Note are profitably reproduced below:

“Should this assumption prove correct and considering that Subash Chandra Kapoor has already served the ten year sentence for the offences on which his extradition is bound, he would have to be released immediately in order to leave India, based on the assurance given in the extradition proceedings by way of a verbale note from the Republic of India dated 16 March 2012

According to knowledge obtained by the Federal Foreign Office, he remains in custody without any discernible legal basis. It is emphatically noted that the extension of the prosecution against him was rejected by diplomatic note dated December 4, 2023. The principle of speciality, which formed the basis for the extradition therefore precludes any further prosecution

The Federal Foreign Office thus continues to expect the immediate release of Subash Chandra Kapoor”

21. Thus, this is not a case in which the issue of consent has not yet arisen. The Requested State has expressly declined the proposed extension of prosecution. It is stated by the respondents that fresh proposals have subsequently been submitted seeking consent in respect of additional



HCP(MD) No.366 of 2026

cases and reply therefor is awaited. However, it is noteworthy that the submission of a request for consent cannot be equated with the grant of consent. In other words, a pending request for consent is not consent, for, it is for the Requested State to take a call in the matter on a case-to-case basis. As contended by the respondents, if the submission of a request by the Requesting State to the Requested State is to be construed as equivalent to consent, then, it will mean that seeking sanction is an empty formality.

22. The materials further show that in the course of the extradition process, the Government of Tamil Nadu was called upon to furnish a confirmation that the Rule of Specialty would not be violated. In response, *vide* communication dated 01.10.2019, the Chief Secretary, Government of Tamil Nadu, conveyed in no uncertain terms that the Rule of Specialty would not be violated and that the petitioner would not be tried for any offence other than Crime No.65 of 2008, for which clearance had been obtained from Germany through the appropriate authorities. The State has also assured that the commitments made in this regard would be honoured. In the wake of such an unconditional confirmation, it is not expected of the respondents to take a U-turn now.



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HCP(MD) No.366 of 2026



23. The legal position of the petitioner must necessarily be examined in the light of the limitations subject to which his surrender was obtained and the assurances furnished by the State in that behalf. A sovereign State cannot secure the surrender of an individual from another sovereign State, subject to particular conditions and subsequently show scant regard to the very conditions and assurances governing the surrender.

24. Though several judgments have been relied on by the learned *Amicus Curiae*, the Supreme Court, in **Abu Salem Abdul Kayyam Ansari**, *supra*, has emphasized the binding nature of the limitations and assurances governing extradition and held that extradition is founded upon international comity and mutual confidence between sovereign States and the conditions subject to which a fugitive is surrendered cannot be treated as mere procedural formalities capable of being disregarded at the discretion of the Requesting State and that the executive is bound to comply with its international obligations under the Extradition Act as also on the principle of comity of courts which forms the basis of the extradition.

25. Now, coming to the submissions of the Counsel for State of Tamil Nadu and the intervenor with regard to the heinous nature of the



HCP(MD) No.366 of 2026

allegations against the petitioner, it is true that the other cases pending against the petitioner also involve allegations of a grave and serious nature involving theft of invaluable antique idols from temples across the country which are of national heritage. The petitioner, along with his accomplices, by committing the offences and trading the stolen antique idols, had illegally earned an exponential and gargantuan sum running to several millions of dollars. This Court is quite conscious of the seriousness of those allegations. However, it requires to be borne in mind that the gravity or heinous nature of an alleged offence cannot, by itself, create a legal authority for detention where the rule of specialty otherwise requires the consent of the requested State. The rule of law does not operate differently according to the gravity of the accusation. If the consent of the requested State is a condition for subjecting an extradited person to detention, trial or any other restriction of personal liberty in respect of a pre-extradition offence, the seriousness of that offence cannot substitute for the consent required by the statute and the Treaty.

26. The Court cannot validate an otherwise unauthorized deprivation of liberty merely because the allegations against the person concerned are serious or heinous in nature. Constitutional guarantees and statutory limitations are tested most meaningfully in cases involving grave

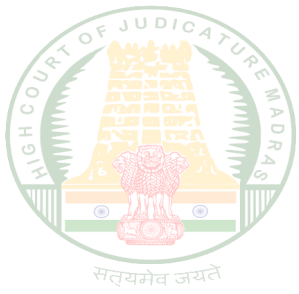


allegations. The seriousness of an accusation may be relevant to the merits of a case, but it cannot dispense with the legal requirements governing the manner in which the liberty of an extradited person may be restricted.

27. Now, coming to the legality of the continued detention, the petitioner has concededly served out the sentence slapped on him in the case for which he was extradited. The authority for his custody under that case has, therefore, come to an end and thus, any further detention must consequently rest upon an independent and presently existing authority of law. The mere existence of other pending criminal cases cannot, by itself, be the complete answer when the person concerned was surrendered to India pursuant to an extradition arrangement governed by the Rule of Specialty.

28. As discussed above, the legality of the petitioner's present custody must, therefore, be tested with reference to:

- (i) Section 21 of the Extradition Act, 1962;
- (ii) Article 19 of the Extradition Treaty;
- (iii) the consent or otherwise of Germany;
- (iv) the terms and assurances governing the petitioner's surrender; and
- (v) Article 21 of the Constitution of India.



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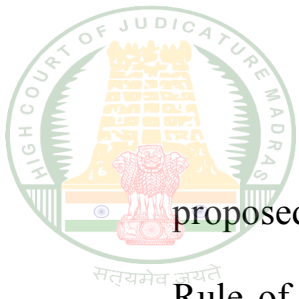
HCP(MD) No.366 of 2026



29. Article 21 of the Constitution of India protects every person, including a foreign national, from deprivation of personal liberty except according to procedure established by law. The constitutional inquiry in a habeas corpus petition is directed to the legality of the present detention. It is not sufficient to contend that the petitioner faces serious allegations or that consent may possibly be obtained in future. The authority for the restriction of liberty must exist in the present and not on mere surmises and conjectures.

30. A future possibility cannot substitute for a presently existing legal authority. Likewise, a request for consent cannot be treated as consent, pending the decision of the Requested State.

31. With regard to the dismissal of H.C.P. No.1794 of 2012 challenging the order of remand and the subsequent disposal of the SLP(Crl) No.15606 of 2024 before the Hon'ble Supreme Court, it is to be noted that the earlier habeas corpus petition arose in a different factual context. The present petition is predicated on subsequent developments, including the petitioner's conviction and completion of sentence in the extradition case, the express communication of Germany declining the



HCP(MD) No.366 of 2026

proposed extension of prosecution, the State's assurance concerning the Rule of Specialty and the liberty granted by the Supreme Court by order dated 15.09.2025 to raise legal contentions under the Extradition Act, 1962 and other applicable provisions of law before the appropriate forum. The present petition, therefore, raises the question of the legality of the petitioner's continuing detention in the light of circumstances that have subsequently arisen and must be considered on its own merits.

32. At the cost of repetition, the undisputed position is that the petitioner was extradited in connection with Crime No.65 of 2008 and he has served out the sentence slapped on him in that case. The Rule of Specialty governs the consequences of his extradition. Article 19 of the Treaty expressly protects him against unauthorised detention, trial or other restrictions upon his personal liberty in respect of pre-extradition offences. Germany has expressly declined the proposed extension of prosecution. A fresh request for consent, if any, cannot be equated with the consent itself.

33. The other pending cases against the petitioner may involve serious and heinous allegations. Nevertheless, the gravity of those allegations cannot dispense with the requirements of the Extradition Act and the Treaty. If the Requested State's consent is necessary under the Rule



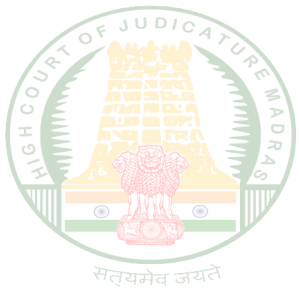
HCP(MD) No.366 of 2026

of Specialty for subjecting an extradited person to further restraint in connection with pre-extradition offences, the absence of such consent cannot be overcome by reference to the seriousness of the allegations.

34. The Rule of Specialty cannot be observed in form and defeated in substance. Nor can the petitioner's liberty be withheld on the basis of the possibility that consent may be obtained at a future date. It may not be out of place to state here that even according to the respondents, sanction has been denied in four cases. The present detention must be justified by a presently existing authority of law consistent with the conditions subject to which the petitioner was surrendered.

35. For all the foregoing reasons, this Court holds that the petitioner's continued detention is without authority of law and cannot be sustained in the absence of consent by the requested State as contemplated by the Extradition Act, 1962 and the Extradition Treaty.

36. In the result, the Habeas Corpus Petition stands allowed. The first respondent is directed to take custody of the petitioner from the Central Prison, Trichy, within two weeks and proceed in accordance with law for returning him to Germany. Consequently connected miscellaneous petition stands closed



HCP(MD) No.366 of 2026

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37. While parting, this Court places on record its deep sense of

appreciation to the assistance rendered by Mr. A. Thiruvadi Kumar, learned

Amicus Curiae.

[A.D.J.C.,J.] [N.G.N.,J]

08.09.2026

Index : Yes/No

Internet : Yes/No

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To

1. The Secretary
The Union of India
Ministry of Home Affairs,
Government of India
North Block, New Delhi

2. The Deputy Secretary
Ministry of Home Affairs,
Government of India,
North Block, New Delhi.

3. The Home Secretary,
The State of Tamil Nadu
Government of Tamil Nadu,
Secreatarit, Chennai- 600 009

4. The Superintendent of Police
Idol Wing,
Chennai

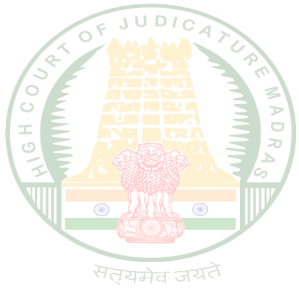


HCP(MD) No.366 of 2026

5. The Superintendent,
Central Prison,
Trichy- 20

6. The Secretary,
The Union of India
Ministry of External Affairs,
Government of India
South Block
New Delhi

7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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HCP(MD) No.366 of 2026

A.D.JAGADISH CHANDIRA, J.

and

N.GUNASEKARAN,J.

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Pre Delivery order made
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08.09.2026