



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1499 of 2015

Pandi

..Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison,
Central Prison, Madurai.

..Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records of the impugned order of detention in No.94/BCDFGISSSV/2015, dated 22.07.2015, on the file of the second respondent and quash the same as illegal and to direct the respondents to produce the detenu Arunkumar @ Pannandu, Male, aged 23 years, S/o.Pandi, now detained at the Central Prison, Madurai, before this Court and set him at liberty forthwith.

For petitioner

: Mr.J.Selvam

For Respondents

: Mr.A.Ramar

Additional Public Prosecutor

O R D E R

[Order of the Court was made by P.R.SHIVAKUMAR, J.]

The petitioner is the father of the detenu. The detenu has been detained by the second respondent by his order in Detention Order No.94/BCDFGISSSV/2015, dated 22.07.2015, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.545 of 2015 registered on the file of B3 Teppakulam Police Station for offences punishable under Sections 147, 148, 341, 342, 302 @ 120-B, 147, 148, 341, 342, 302, 109, 201 and 34 of the Indian Penal Code and the following one adverse case:-

(i). Crime No.159 of 2013 registered on the file of B4 Keetaithurai Police Station for offences punishable under Sections 147, 148, 324, 307, 506(ii) of the Indian Penal Code and Section 3(1) of TNPPDL Act.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Goonda" and that his presence at large would be prejudicial to the maintenance of public order and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.



3. Though the order of detention is assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that the representation for revocation of the order of detention was not expeditiously disposed of and that on the ground of delay in disposal of the representation, the order of detention is liable to be set aside.

4. In elaboration of the said contention, the learned counsel for the petitioner submits that a representation dated 13.10.2015 was sent to the Detaining Authority as well as the first respondent; that the representation sent to the Detaining Authority was received on 14.10.2015, whereas the one sent to the first respondent was received on 15.10.2015; that in the counter affidavit, a wrong information came to be furnished as if the representation was received only on 19.10.2015 and that if the correct date of the receipt of the representation by the first respondent is taken into account, then as per the particulars furnished in the counter affidavit itself, the delay in disposal will be obvious.

5. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

6. It is not in dispute that a representation for revocation of the detention order was received by the first respondent. But, as against the particulars submitted by the learned counsel for the petitioner, the following particulars are furnished in the counter affidavit:-

"I submit that the averment made in para(j) of the affidavit is denied and not true. The representation dated 12.10.2015 [not 13.10.2015 submitted by the petitioner] to the State Government [Respondent No.1] and marked a copy to the Detaining Authority was received by the Detaining Authority from the Government on 19.10.2015 and remarks for the same was sent to the Government on 20.10.2015, without any delay, as detailed below:-

Representation received from the Government
: 19.10.2015

Remarks called for from the Sponsoring
Authority : 19.10.2015

Remarks received from the Sponsoring Authority
: 20.10.2015

Remarks sent to the Government
: 20.10.2015.

Based on which the State Government has also rejected the said representation vide its letter in No.21710/Home, P&E (9)/2015, dated 09.10.2015. Hence, the contention of the petitioner is not sustainable on merits".

7. The Detaining Authority in the counter affidavit refers to the representation received from the Government, namely, one that was served on the first respondent on 15.10.2015. The Detaining Authority has not referred to the receipt of the representation received by him on 14.10.2015. There is nothing on record to show that the said representation was forwarded to the Government. The Detaining Authority, having received such a representation for revocation of the order of detention, could have very well submitted his remarks along with the representation to the Government, without waiting for a communication



from the Government to call for the remarks based on the receipt of the representation by the first respondent. The date of receipt of representation by the first respondent is not found mentioned in the counter affidavit. On the other hand, the petitioner has produced certificates obtained from the Postal Department to the effect that the representation was served on the Detaining Authority on 14.10.2015 and on the first respondent on 15.10.2015. Hence, there was an inaction on the part of the Detaining Authority to forward the representation received by him after the passing of the detention order. So far as the representation received by the first respondent is concerned, initially, there was a delay of four days in calling for remarks from the Detaining Authority. Though remarks was sent to the Government on 20.10.2015, the Government took 20 days time thereafter to dispose of the representation. If holidays are excluded, then there will be a delay, which will account for more than five days, if the initial delay of five days is also taken into consideration. Hence, on the ground of delay, a denial of reasonable opportunity to the detenu has been occasioned. On that ground alone, the order of detention is liable to be set aside.

8. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 22.07.2015, made in 94/BCDFGISSSV/2015, passed by the second respondent, the Commissioner of Police, Madurai City and directs the release of the detenu, by name Arunkumar @ Pannandu, aged about 23 years, S/o.Pandi forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(crl.side)

/True copy/

Sub Assistant Registrar(CS)

To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police, Madurai City, Madurai.
- 3.The Superintendent of Prison, Central Prison, Madurai.
- 4.The Joint Secretary to Govt.,
Public (Law & Order) Department,
Fort St.George, Chennai-9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P (MD) No.1499 of 2015
22.12.2015

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