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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE MS. JUSTICE V.M. VELUMANI

H.C.P. (MD) No.622 of 2016

Mariammal

... Petitioner

-vs-

1. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition and Exercise Department
Fort St. George, Chennai-9

2. The District Collector
Tirunelveli
Tirunelveli District

3. The Superintendent
Central Prison
Palayamkottai
Tirunelveli District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to produce the body of the detenu / petitioner's husband, namely, Petchi @ Suresh before this Court and set him at liberty forthwith by calling for the records pertaining to the detention order in M.H.S.Confdl.No.42/2016, dated 31.03.2016, passed by the second respondent and quash the same.

For Petitioner : Mr.P.Samuel Gunasingh

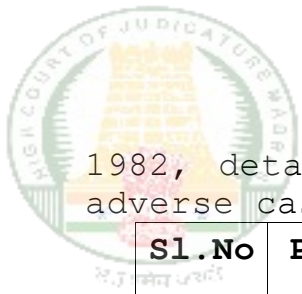
For Respondents : Mr.T.Mohan
Addl.Public Prosecutor

O R D E R

[Order of the Court by M.SATHYANARAYANAN, J.]

This Habeas Corpus Petition has been filed by the wife of the detenu, namely, Petchi @ Suresh, challenging the order of detention, in M.H.S.Confdl.No.42/2016, dated 31.03.2016, passed by the second respondent.

2. The second respondent has passed the order of detention, dated 31.03.2016, against the petitioner's husband, namely, Petchi @ Suresh, under Section 3(1) of the Tamil Nadu Act 14 of



1982, detaining him as a 'Goonda' on the basis of the following adverse case and ground case:

Sl.No	Police Station and Crime No.	Section of Law
1.	Munneerpallam Police Station, Crime No.82 of 2016 (adverse case)	147, 148, 341, 294(b), 302 and 506(ii) I.P.C.
2.	Munneerpallam Police Station, Crime No.83 of 2016 (ground case)	294(b), 387 and 506(ii) I.P.C.

3. On 20.03.2016 the detenu was arrested by the Munneerpallam Police in Crime No.83 of 2016 and he was produced before the learned Judicial Magistrate No.V, Tirunelveli and lodged in the Central Prison, Palayamkottai as a remand prisoner and his remand period was upto 04.04.2016.

4. The learned counsel appearing for the petitioner would submit that the petitioner / wife of the detenu submitted a representation before the detaining authority on 17.05.2016 and it came to be rejected only on 06.06.2016 and there is a total delay of 11 days in disposal of the representation and the learned counsel would further submit that in Paragraph No.6 of the detention order, it is stated that the detaining authority has arrived at a subjective satisfaction as to the detenu coming out on bail in Munneerpallam Police Station Crime No.82 of 2016, by placing reliance upon the similar bail order, dated 01.10.2015, passed in Cr.M.P.228 of 2014, by the learned Principal Sessions Judge, Tirunelveli, and infact the similar bail order, in Cr.M.P.No.228 of 2014, was passed only on 29.01.2014 and not on 01.10.2015, which exhibits a total non-application of mind on the part of the detaining authority in passing the order of detention and in support of his contention, the learned counsel has drawn the attention of this Court to Page No.305 of the typed set of documents and therefore prays for intervention of this Court.

5. Per contra, the learned Additional Public Prosecutor, while reiterating the averments made in the counter affidavit, would submit that after perusing the relevant documents and materials and after recording due satisfaction only, the order of detention has been passed and according to him, on the basis of the materials made available, there was compelling necessity to detain him and hence, the order of detention has been passed by the authority, which does not warrant any interference by this



Court and as regards the reported delay, he would submit that the same has been duly explained.

6. This Court has carefully considered the rival submissions and perused the materials produced.

7. A perusal of the proforma produced would disclose that the representation, dated 17.05.2016, was received by the detaining authority on 19.05.2016 and remarks were called for on the same day and remarks were received on 31.05.2016 with a delay of 11 days, leaving aside the four days holidays between these dates, there is a clear seven days delay, which remains unexplained by the detaining authority. It is certainly a breach of the constitutional imperative and it would render the continued detention impermissible and illegal and therefore, we have to hold that the procedural safeguard given for protection of personal liberty must be strictly followed. It is a trite law that any representation given by the detenu's side should be considered and disposed of by the Government as soon as it is received and any delay in considering the same would violate Article 22(5) of the Constitution of India.

8. Furthermore, a perusal of the documents produced would disclose that the detaining authority, in order to arrive at subjective satisfaction, as to the detenu coming out on bail in Munneerpallam Police Station Crime No.82 of 2016, has placed reliance upon the similar bail order, dated 01.10.2015, passed in Cr.M.P.228 of 2014, by the learned Principal Sessions Judge, Tirunelveli, but the fact remains that the similar bail order was passed only on 29.01.2014 and not on 01.10.2015 and therefore, there is a total non-application of mind on the part of the detaining authority in passing the order of detention and in such circumstances, we have no hesitation in holding that the impugned order of detention suffers from infirmities and illegalities, warranting interference by this Court.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.42/2016, dated 31.03.2016, passed by the second respondent is set aside. The detenu / petitioner's husband, namely, Petchi @ Suresh is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/
Assistant Registrar(T&P)

/TRUE COPY/



To:

1.The Secretary to Government,
Prohibitor and Exercise Department,
State of Tamil Nadu,
Fort St.George, Chennai-9.

2.The District Collector,
Tirunelveli,
Tirunelveli District.

3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.

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

5.The Joint Secretary to Government,
Public (Law & Order),Fort.St.George,
Chennai - 9.

+1cc to M/S.P.Samuel Gunasingh, Advocate in SR.No.58255

H.C.P.(MD) No.622 of 2016
03.10.2016

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PA/SK-SKN/SAR I/07.10.2016/4P/7C