



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**

HABEAS CORPUS PETITION(MD)No.780 of 2016

Nimal @ Martin Nimal @ Kakkaiyan,
S/o.Philipraj

... Petitioner

Vs.

1) State of Tamil Nadu,
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2) The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3) The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to call for the entire records connected with the detention order passed in H.S.(M) Confdl.No.22/2016, dated 31.05.2016 on the file of the second respondent herein, quash the same and also to direct the respondents to produce the detenu or body of the detenu, namely Nimal @ Martin Nimal @ Kakkaiyan, S/o.Philipraj, aged about 29 years, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.T.Mohan

Additional Public Prosecutor

**O R D E R****(Order of the Court was made by V.M.VELUMANI, J.)**

Nimal @ Martin Nimal @ Kakkaiyan, S/o.Philipraj, has been detained as a Goonda, in Central Prison, Palayamkottai. He has sought for a Writ of Habeas Corpus, to quash the the order of detention passed by the District Collector and District Magistrate, Thoothukudi District, Thoothukudi, the second respondent herein, in his proceedings in H.S.(M).Confdl.No.22/2016 dated 31.05.2016 and to set him at liberty.

2. The petitioner is the detenu. From the grounds of detention, it is seen that one adverse case has been registered against him on 27.09.2015, in Crime No.349/2015, for the offences under Sections 341, 294(b), 307, 506(ii) I.P.C. and thereafter, it was altered to Sections 341, 294(b) and 302 I.P.C. The grounds of detention further stated that the detenu used to quarrel with his wife, namely Maheshwari. His father-in-law Velusamy used to advise him not to quarrel with his daughter/wife of the detenu. On hearing from his daughter Maheshwari that the detenu is quarrelling with her on 15.04.2016, the said Velusamy visited his daughter's house on 15.04.2016. On seeing the said Velusamy, the detenu came in front of his house at 09.30 hours with an Aruval and abused him in filthy language and attacked him aiming his neck with Aruval. The neighbours having seen this occurrence on the focus of the light, came to rescue Velusamy and they were threatened with dire consequences by the detenu. The detenu put his Aruval on the neck of Velusamy and extorted Rs.1,200/- from the pocket. When Maheshwari, wife of the detenu, came to rescue her father, the detenu chased his wife/Maheshwari with Aruval in the Street. The said Velusamy also ran away from the scene of occurrence and fearing his life, was hiding in Vembar Velikurvai Forest. On the next day morning, i.e., on 16.04.2016, at 09.00 a.m., a complaint was lodged by Velusamy and the same has been registered against the petitioner/detenu in Crime No.75/2016, for the offences under Sections 294(b), 387, 307 and 506(ii) I.P.C. on the file of Soorangudi Police Station and the petitioner was arrested and remanded to judicial custody and lodged in the Central Prison, Palayamkottai. The detenu filed a petition in Cr.M.P.No.1595/2016 for bail before the Principal Sessions Court, Tuticorin, on 10.05.2016 and the same was dismissed on 19.05.2016.

3. The detaining authority considering all the materials placed before him that the detenu is a rowdy element and in the ground case, he abused his father-in-law - Velusmay and attempted to murder him and also extorted money with deadly weapon and threatened the public and also disturbed the public peace. If he is enlarged on bail, he will indulge in such further activities, which will be prejudicial to the maintenance of public order and arrived at subjective satisfaction that there is a real possibility of detenu coming out on bail in the ground case, since bail is granted by



Courts in such cases. Therefore, the detaining authority passed the order of detention.

4. Mr.N.Pragalathan, learned counsel for the petitioner submitted that false cases have been foisted against the petitioner/detenu. The detaining authority without properly considering the materials on record, mechanically, passed the order of detention. The petitioner was not supplied with copies of documents in vernacular language and translated copies were not furnished to him. In spite of the same, the detenu made a representation dated 18.06.2016 and the same was rejected on 22.07.2016 after considerable delay and therefore, he prayed for quashing the order of detention and set the petitioner at liberty.

5. Mr.T.Mohan, learned Additional Public Prosecutor submitted that the petitioner is a rowdy element. He attempted to murder his father-in-law, threatened the public with dire consequences with deadly weapon and disturbed the public peace and has also involved in previous case. The detaining authority on satisfying the materials placed before him with due and proper application of mind, has passed the order of detention. The petitioner was supplied with all copies in Tamil translation. There is no delay in passing the order on the representation of the petitioner and therefore, prayed for dismissal of the Habeas Corpus Petition.

6. We have carefully perused all the materials available on record and considered the arguments advanced by the learned counsel appearing for the parties.

7. A perusal of the proforma produced would disclose that the petitioner made a representation dated 18.06.2016. The detaining authority received the same on 28.06.2016 and remarks were called for on the same day and the remarks were received on 18.07.2016 with a delay of 19 days, leaving aside the five days holidays between these dates, there is a delay of 14 days, which remains unexplained by the detaining authority and that itself would affect rights of the detenu guaranteed under Article 22(5) of the Constitution of India and therefore, the detention order in question is liable to be quashed.

8. In the result, the Habeas Corpus Petition is allowed and the impugned order of Detention in H.S.(MD)Confdl.No.22/2016, dated 31.05.2016, passed by the second respondent is set aside. The detenu, by name, Nimal @ Martin @ Nimal @ Kakkaiyan, is directed to be set at liberty, unless his presence or detention is required in connection with any other case.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/



To

- 1) The Secretary,
The Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2) The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3) The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4) The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai.
- 5) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.N.PRAGALATHAN, ADVOCATE IN SR No. 57982

SMN2

TE/DB : 21/10/2016 : 4P/7C

H.C.P. (MD) No.780 of 2016
03.10.2016