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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.04.2018
CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P.(MD)No.482 of 2018

Sudalaivadivu ... Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Borstal School, District Jail,
Pudukottai. ... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of the Respondent No.2 in M.H.S. Confdl. No.99/2017 dated 22.09.2018 and quash the same and direct the Respondents to produce the body or person of the detenu by name Premsankar, son of Mundasamy, aged about 19 years, now detained at Borstal School, District Jail, Pudukottai before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor.

ORDER

(Order of the Court was made by C.T.SELVAM,J.)

The petitioner is the mother of the detenu viz., Premkumar, son of Mundasamy, aged about 19 years. The detenu has been detained by order in M.H.S.Confdl. No.99/2017, dated 22.09.2017, holding him to be a "Goonda", as contemplated under 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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2.We have heard learned counsel for petitioner and learned Additional Public Prosecutor appearing for respondents. We have also perused the records produced by the Detaining Authority.

3.Though several grounds have been raised in the Habeas Corpus Petition, learned counsel for the petitioner would mainly focus his argument on the two grounds. Firstly, learned counsel, by placing authorities, submitted that the order of detention is dated 22.09.2017 and the materials in support thereof have been served on the detenue on 29.09.2017 i.e., after the period of 5 days permitted under Section 8 of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Sand-Offenders, Sexual-Offenders, Slum-Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982). Further, the detenu was arrested in the ground case on 29.08.2017; whereas the Detention order was passed on 22.09.2017, i.e., after a lapse of 24 days. This inordinate delay in passing of detention order would vitiate the same. In support of his contention, learned counsel for petitioner placed reliance on the judgment of a Division Bench of this Court reported in 2005 MLJ (Crl.) 752 (Ramesh v. District Collector and District Magistrate, Tiruchirapalli District and another). Hence, on the above grounds, the detention order is liable to be set aside.

4.Learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in serving the materials to the detenu and passing the order of detention, on that score alone, the impugned detention order cannot be quashed. According to learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5.In Mageswari v. Government of Tamil Nadu, 2011 (1) MWN (Crl) 599 : 2011 (3) MLJ (Crl) 39, this Court has held as follows:

> "7.Of course, the language of section 8(1) does not refer to the supply of copies of the documents along with the grounds of detention. It simply refers to the communication to the detenu of the grounds on which the order of detention has been made. But, however, it was superadded with the rider specifying the purpose for which the grounds are to be communicated. The purpose enshrined therein is to afford the detenu the earliest opportunity of making an effective representation against the order of detention to the Government. The mere supply of the grounds of detention to the Government. The mere supply of grounds of detention unaccompanied by copies of the materials relied on by the detaining authority, is of no use for the purpose of making an effective representation, at the earliest opportunity, against the order of detention. Therefore, we are of the view that the supply of copies of materials relied on along with

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the grounds of detention is also the requirement of the said provision to enable the detenu to make an effective representation at the earliest point of time. In other words, the supply of grounds of detention as contemplated in section 8(1) will include the supply of the copies of the relied on documents also and this view will also be strengthened by the fact that the abstract order of detention could not have been passed even before preparing the grounds of detention stating the reasons."

6. In the subject case, admittedly, the detention order has been passed on 22.09.2017 and the materials in support thereof have been served on the detenu on 29.09.2017, beyond the period of 5 days permitted under Section 8 of Tamil Nadu Act 14 of 1982.

7. Further, a perusal of the grounds of detention as well as the detention order passed by the detaining authority would show that the Detention Order was passed on 22.09.2017; but from the grounds of detention, it is seen that the detenu was arrested in the ground case as early as on 29.08.2017. This shows an inordinate delay of nearly 24 days in passing the detention order. There is no explanation forthcoming on the side of the respondents for this inordinate delay in passing the detention order. Learned counsel for the petitioner has rightly placed reliance on the decision in Ramesh's case (cited supra) wherein this Court has held as follows:

"....

3.It is brought to our notice by the learned Government advocate that the analyst report was received on 06.12.2014 and the doctor has issued certificate on 07.12.2014. Even in the counter affidavit filed by the first respondent, it is stated that the sponsoring authority has submitted his affidavit only on 15.01.2015. When the sponsoring authority is in possession of the analyst report and the doctor's report even on 06.12.2014 and 07.12.2014, there is no proper explanation for submitting his affidavit till 15.01.2015 for invoking the provisions of Tamil Nadu Act 14 of 1982. Even thereafter, the impugned detention order was passed only on 27.02.2015, i.e. After five weeks of receipt of the affidavit from the sponsoring authority. Though the detaining authority has filed a counter affidavit, there is no explanation for the undue delay in passing the impugned order.

4.In this regard, learned counsel for the petitioner relied on unreported decision of this Court rendered in H.C.P. No.1149 of 1995, dated 13.12.1995. In similar circumstances, after pointing out the unexplained delay between the date of submission of the affidavit by the sponsoring authority and the detention order, the Division Bench of this Court has concluded thus:

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"Such delays tend to have an affect of snapping the link between prejudicial activity and passing of preventive orders....."

8. In view of the above decision rendered by the Division Bench of this Court, this Court is of the view that the detention order is unsustainable in law on the ground of inordinate and unexplained delay in passing the detention order and the same is liable to be set aside.

9. In the result, the Detention Order, passed by the second respondent, in his proceedings in M.H.S.Confdl No.99/2017, dated 22.09.2017, is quashed. The detenu, namely, Premsankar, son of Mundasamy, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

10. In the upshot, we allow the Habeas Corpus Petition.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Borstal School, District Jail,
Pudukottai.

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

5.The joint Secretary to Government,
Public (Law & order) Department,
Fort St.George, Chennai-9.

+1CC to Mr.R.Alagumani, Advocate, SR.No.63749

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SJ

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