



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.229 of 2019

T.Thangamani

... Petitioner

Vs.

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

2.The District Magistrate and
District Collector,
Karur District, Karur.

3.The Superintendent of Police,
Central Prison, Trichy.

... Respondents

PRAYER:- Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus praying to call for the records in connection with the order of detention passed by the second respondent dated 31.01.2019 in Cr.M.P.No.01/2019 against the petitioner's husband Thangaraj, son of Muthuchamy, aged about 51 years, who is confined at central prison, Tiruchirappalli and set aside the same and direct the respondents to produce the detenu before this Court and set him liberty.

For Petitioner : Mr.V.Kathirvelu
Senior counsel for Mr.K.Balasubramani
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

The petitioner is the wife of the detenu and challenge is made to the order of detention dated 31.01.2019 passed by the first respondent, under which, the detenu has been branded as "Goonda" and detained under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers



and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

2. As per the grounds of detention passed by the second respondent, the detenu came to adverse notice in the following cases:

(i) Crime No.12 of 2019 on the file of Thanthonimalai Police Station under Sections 273, 328, 511 IPC r/w Sections 7 and 20(i) of Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 and Sections 57 and 59 of Food safety and Standards Act, 2006.

(ii) Crime No.13 of 2019 on the file of Thanthonimalai Police Station under Sections 273, 328, 511 IPC r/w Sections 7 and 20(i) of Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 and Sections 57 and 59 of Food safety and Standards Act, 2006.

3. The grounds of detention further read that on receipt of a secret information about hoarding and selling of Kudka, Pan Masala, Tobacco Products, which are banned by the Tamil Nadu Government, the Sub Inspector of Police, Vellianai Police Station proceeded for raid in a garden house owned by Othaiyur Ramasamy on 15.01.2019 at 12.30 hours along with a Head Constable and a Police Constable and when they approached the said house, they sensed an odour of Tabacco and betel Nut from the said house. Developing suspicion, the police party found 6 numbers of gunny bags weighing 40 kgs each and 6 numbers of card board boxes weighing 20 kgs each containing Hans, Ganesh, Shanthi brand Pan Masala and Kudka pockets. The weight of the said property is 360 kgs and the worth of the articles is about Rs.1,80,000/- in total. On enquiry, they became aware of the fact that the above said articles were hoarded in that garden house by few persons namely, Thangaraj (detenu) S/o Muthuchamy, Selvaraj, S/o Ramasamy and Subramani @ Kongu Mani S.o Marappa Gounder. The contraband was seized at 13.30 hours on the same day. Thereafter, the sample was collected for chemical analysis. The police party brought the seized contraband to the police station and registered a case in Crime No.14 of 2019 for the commission of offence punishable under Sections 273, 328, 511 IPC r/w Sections 7 and 20(i) of Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 and Sections 57 and 59 of Food safety and Standards Act, 2006. The detenu was arrested on 16.01.2019 and produced before the Court of Judicial Magistrate No.I, Karur on 16.01.2019 and was ordered to be remanded upto 30.01.2019. Subsequently, the said period of remand was extended upto 13.02.2019.



4. The detaining authority being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention. Making challenge to the same, the present Habeas Corpus Petition.

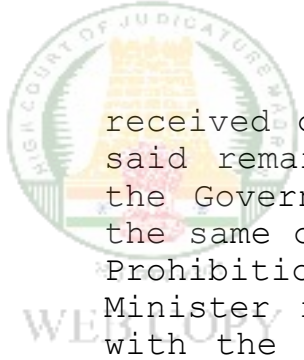
5. The learned senior counsel for the petitioner would submit that for revoking the order of detention passed by the second respondent, a post-dated representation, dated 12.02.2019 was submitted. Remarks were called on 18.02.2019 and the same was received on 05.03.2019. The Deputy Secretary to Government, Home Prohibition and Excise Department, dealt with the same on 05.03.2019. The Hon'ble Minister for Electricity, Prohibition and Excise dealt with the same on 25.04.2019 and there was a delay of 50 days in dealing with the said representation. Even by excluding 17 Government holidays, still there was a delay of 33 days in dealing with the said representation and in the absence of any proper and tenable explanation to the said delay, it is fatal to the impugned order and prays for quashment of the said detention order.

6. Per contra the learned Additional Public Prosecutor has drawn the attention of this Court to the counter affidavit filed by the second respondent / detaining authority. He would submit that the representation dated 12.02.2019 was received on 21.02.2019, remarks were called on 21.02.2019 and the same was received on 25.02.2019 and reply was sent to the Government on 26.02.2019. Therefore, the delay cannot be considered as abnormal or huge and therefore, prays for dismissal of this petition.

7. The Court has carefully considered the rival submissions made on either side and perused the records.

8. A perusal of the grounds of detention would disclose that huge quantity of Pan Masala and Kudka products weighing about 6,603 kgs were seized and worth of the same is Rs.33,01,500/-. It is normally expected that the authority to consider the post-dated representation alleged to have been sent, and take expeditious steps to consider and dispose of the post-dated representation submitted by the detenu and it is also a Constitutional mandate cast upon the authority under Article 22(5) of the Constitution of India. A careful scrutiny and perusal of the counter affidavit filed by the second respondent and the reply to the counter affidavit would disclose that no serious efforts or concerns have been exhibited by the concerned official/the authority as to the consideration and disposal of the said post-dated representation at an early date.

9. A perusal of the work sheet produced by the learned Additional Public Prosecutor appearing on behalf of the State would disclose that the post-dated representation dated 12.02.2019 was



received on 15.02.2019. Remarks were called on 18.02.2019 and the said remarks were received on 05.03.2019. The Under Secretary to the Government, Home Prohibition and Excise Department dealt with the same on 05.03.2019 and Deputy Secretary to the Government, Home Prohibition and Excise Department dealt with on 05.03.2019 and the Minister for Electricity, Prohibition and Excise Department dealt with the same on 25.04.2019 and rejection letter was prepared on 25.04.2019 and despatched to the detenu on 26.04.2019. Admittedly, there was a considerable delay of 50 days in dealing with the representation by the Ministry for Electricity, Prohibition and Excise Department. Even by excluding 17 Government holidays, still there was a considerable and unexplainable, huge delay of 33 days in dealing with the said representation. The counter affidavit filed on behalf of the second respondent has failed to offer any plausible and tenable explanation for such huge delay. In the absence of any such explanation for the said delay the impugned order of detention is liable to be quashed.

10.It is also to be noted at this juncture that the detaining authority has recorded that hoarding of such huge quantity of Tobacco and Kudka products on the part of the detenu would definitely affect public order and held that no serious concern has been exhibited by the detaining authority as to the expeditious consideration and disposal of the post-dated representation and in that process, the constitutional mandate cast upon them under Article 22 (5) of the Constitution of India, has also been violated. Hence, on that sole ground, the impugned order of detention is warrants interference.

11. In the result, this Habeas Corpus Petition is allowed and the impugned order of detention in Cr.M.P.No.01/2019, dated 31.01.2019, passed by the second respondent is quashed. The detenu Thangaraj, son of Muthuchamy, is directed to be set at liberty forthwith, unless his detention / remand is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar(AE)

// True Copy //

Sub Assistant Registrar(CS)

ta/dsk

To

1.The Secretary to Government,
Home, Prohibition and Excise
Department,
Secretariat,
Chennai - 9.



2.The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai-600 009.

3.The District Magistrate and
District Collector,
Karur District, Karur.

4.The Superintendent of Police,
Central Prison, Trichy.

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

copy to

The Chief Secretary to Government.
Government of Tamil Nadu,
Secretariat,
Chennai - 9.

+1CC TO MR.K.BALASUBRAMANI, Advocate Sr. No. 66761

H.C.P(MD) No.229 of 2019
03.06.2019

GRL(CO)
TR (25.06.2019) 5P 8C