



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD)No.132 of 2019

Antony Babu

... Petitioner

Vs.

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

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

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

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the entire records connected with the detention order passed in M.H.S.Confdl No.14/2019 dated 21.01.2019 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Antony Babu aged about 29 years, S/o.Francis, now detained at Central prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : N.Pragalathan

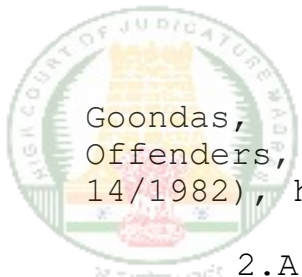
For Respondents : Mr.K.Dinesh Babu,

Additional Public Prosecutor

O R D E R

(Order of the Court was made by **B.PUGALENDHI, J.**)

The detenu himself is the petitioner herein and challenging the impugned order of detention dated 21.01.2019 passed by the second respondent, branding him as a Goodna under the provisions of Section 3[1] of the Tamil Nadu Prevention of Dangerous Activities of Boot leggers, 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 14/1982), he has filed the present habeas corpus petition.

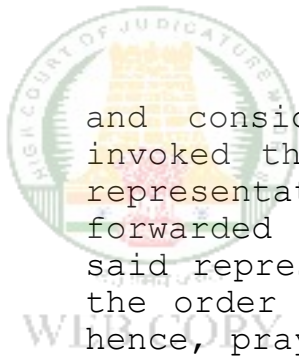
2.A perusal of the grounds of detention dated 21.01.2019, passed by the second respondent herein, would disclose that the detenu, viz., Antony Babu came to the adverse notice to the Suthamalai Police Station in Crime No.348 of 2018, which has been registered for the offence under Sections 341, 294 (b), 307 and 506 (ii) IPC.

3. The grounds on which the detenu was detained are that on 05.01.2019 at about 8.00 hours at Suthamalai Bazar, while the complainant Vasantha was going by walk, the detenu waylaid her, scolded her in filthy language and also humiliated her. The complainant out of fear shouted and on hearing the noise, the public who were standing near by rushed to the spot. The detenu threatened the public by brandishing a knife over his head and on seeing this act, the public got panic and the shop owners closed the shop and due to this incident, the normal traffic and routine life of the common public came to a standstill. On the complaint of Vasantha, a case in Crime No.8 of 2019 was registered against the detenu on the file of the Suthamalai Police Station, for the offence punishable under Sections 341, 294(b), 506(ii) IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women, 2002 was also registered. Being satisfied that the acts of the detenu are prejudicial to the maintenance of peace and public order, the second respondent has branded the petitioner as Goonda as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982 and passed the detention order. Challenging, the order of detention, this Habeas Corpus Petition has been filed by the detenu.

4.The learned Counsel appearing for the petitioner would submit that a bail application filed by the detenu in the ground case was pending and there was no real and imminent possibility of the detenu coming out on bail and the detaining authority arrived at the subjective satisfaction, relying upon the bail granted to some other person that in similar cases in due course bail would be granted. On the documents relied upon by the detaining authority, the similar case is nowhere similar to the detenu's case and further, the documents of the similar case were also not provided to the detenu. He also submitted that his representation was not considered by the authorities and therefore, prays for quashment of the order of detention passed by the second respondent.

5.Per Contra Mr.K.Dinesh Babu, learned Additional Government Pleader appearing for the State would submit that a bail application was moved before the Judicial Magistrate, Cheranmahadevi was dismissed and the detenu has filed another bail application before the Sessions Court, Tirunelveli in CrMP No.505 of 2019 and the same

<https://www.responsonline.org/hcse/How>



and considering the same, the detaining authority has rightly invoked the order of detention. He would further submit that the representation sent by the petitioner dated 28.01.2019 was also duly forwarded to the Government on 12.02.2019 and on the same day, the said representation was rejected. As such there is no illegality in the order of detention, warranting intervention of this Court and hence, prays for dismissal of this petition.

6.This Court has considered the rival submissions and also perused the entire materials placed before it.

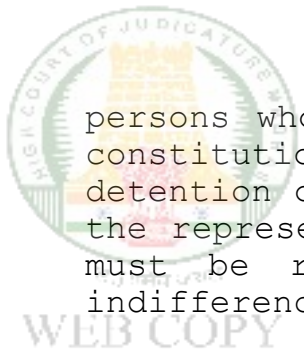
7.The detenu made a representation on 28.01.2019 and the same was received by the detaining authority from the Central Prison, Palayamkottai on 29.01.2019 and the representation was sent to the Government along with remarks on 12.02.2019 and the decision was taken by the Government on the same day, i.e., on 12.02.2019.

8.The detaining authority in his grounds of detention has informed the detenu that he has right to make representation against the order of detention to the detaining authority as well as to the Government and the Advisory Board. It is also informed that if any such representation is received by the detaining authority before approval of the detention order, by the Government, such representation will be duly considered by the detaining authority.

9.As per the counter affidavit filed by the detaining authority as well as the performa filed by the Under Secretary to Government, the representation was made on 28.01.2019 through Central Prison and the same was received by the detaining authority on 29.01.2019, within 12 days from the date of detention i.e., on 21.01.2019.

10.The detaining authority has not considered the representation, though he received the said representation prior to the approval accorded by the Government under Section 3(3) of the Act. The detaining authority without considering the representation, forwarded the representation to the Government along with remarks on 12.02.2019 and the same was disposed of by the Government on 12.02.2019. Even excluding the Government Holidays, still there is a delay of 9 days in considering the said representation.

11.Though the learned Additional Public Prosecutor insists that there is no delay on the part of the Government, since the Government received the representation on 12.02.2019, disposed of the representation on the very same day, there is no detail available either in the counter affidavit or in the proforma for the delay of 9 days in forwarding the said representation to the Government. Article 22(5) of the Constitution of India, casts legal obligation on the Government to consider the detenu's representation as early as possible. There should be no slackness, indifference and



persons who are detained. Any unexplained delay would be breach of constitutional imperative and it would render the continued detention of the detenu as illegal. Every day delay in dealing with the representation has to be explained and the explanation offered must be reasonably indicating that there was no slackness or indifference.

12. In **Rekha vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244**, the Honourable Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

13. In **Sumaiya vs. The Secretary to Government**, reported in **2007 (2) MWN (Cr.) 145**, a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

14. In **Tara Chand vs. State of Rajasthan and others**, reported in **1980 (2) SCC 321**, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

15. In this case, though the representation was made on 28.01.2019, there is a slackness in forwarding the representation to the Government and there are no particulars available for the delay. Moreover, though the detaining authority received the representation, prior to the order of approval, he did not consider the representation and forwarded the representation only on 12.02.2019, after 9 days and therefore, the detention order is liable to be set aside.

16. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, The District Collector and District Magistrate, Tirunelveli District and Tirunelveli M.H.S.Confdl No.14 of 2019, dated 21.01.2019. the detenu, namely, Antony Babu, aged about 29 years, who is now detained at Central Prison, Palayamkottai is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar (CS)



- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
4. The Joint Secretary to Government,
Public(LAW&ORder),
Fort st. George, Chennai 9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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