



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.08.2019
Pronounced on : 29.08.2019

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD)No.151 of 2019

Kumarappan @ Ragul

... Petitioner

Vs.

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... 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 of the respondent No.2 in 05/BCDFGISSSV/2019 dated 23.01.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Kumarappan @ Ragul, son of Muthukaruppan, aged about 41 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Dr.R.Alagumani

For Respondents : Mr.K.Chellapandian,
Additional Advocate General,
assisted by
Mr.K.Dinesh Babu,
Additional Public Prosecutor

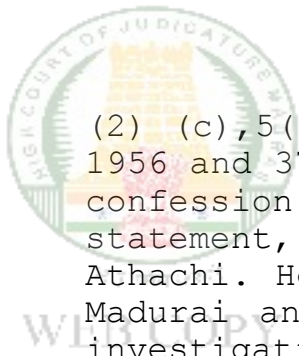
**O R D E R****(Order of the Court was made by B.PUGALENDHI, J.)**

The detenu himself is the petitioner herein and challenging the impugned order of detention dated 23.01.2019 passed by the second respondent, branding him as a Immoral Traffic Offender 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 23.01.2019, passed by the second respondent herein, would disclose that the detenu, viz., Kumarappan @ Ragul came to the adverse notice in the following two cases:-

Sl. No.	Name of the Police Station and Crime No.	Sections of Law
1.	C4 Thilagar Thidal Police Station Cr.No.914 of 2018, dated 12.12.2018	3(1), 4(1), 4(2)(c), 5(1)(a), 5(1)(d) of Immoral Traffic (Prevention) Act, 1956 altered into Section 3(1), 4(1), 4 (2)(c), 5(1)(a), 5(1) (d) Immoral Traffic (prevention) Act, 1956 and 370 IPC
2.	E1 K.Pudur Police Station, Cr.No.929 of 2018, dated 20.12.2018	3(2)(a), 4(1), 4(2) (c), 5(1)(a), 5(1)(d) of Immoral Traffic (Prevention) Act, 1956 and 370 IPC

3. The grounds on which the detenu was detained are that on 20.12.2018 at about 13.00 hours one Nagoor Kani, a mobile phone spare parts merchant went to Bell Hotel at Tamil Sangam road at Madurai, to have food. At that time the detenu approached him and induced him that a beautiful North Indian young girl is available in Moskova Hotel and demanded Rs.4,500/-. The said Nagoor Kani went along with the detenu to the said Moskova Hotel and found that young North Indian girls were present there. He left the hotel by informing the detenu that he would draw money from ATM Centre and he went to the C4 Thilagar Thidal Police Station and preferred a complaint against the detenu. The same was registered in C4 Thilagar Thidal Police Station in Crime No.942 of 2018 under Sections 4(1), 4



(2) (c), 5(1) (a), 5(a), 5(1) (d) of Immoral Traffic (Prevention) Act, 1956 and 370 IPC. The detenu was also arrested on 20.12.2018 and the confession statement was also recorded. Pursuant to the confession statement, a cell phone was also seized from the detenu under an Athachi. He was also produced before the Judicial Magistrate No.II, Madurai and was remanded to judicial custody till 25.01.2019. The investigation revealed that the detenu is indulging in involvement of young girls into prostitution, procuring women for prostitution and alluring the customers through telephone and directly. Since there existed reasonable prognosis against the detenu, based on his antecedents and based on the ground case, he was likely to continue to commit such immoral acts in future also and that created some panic among general public, on the possibility of spreading ill health disease, like AIDS, due to prostitution and in order to curb such sexual exploitation, the second respondent has clamped the order of detention against the petitioner. Challenging the order of detention, this Habeas Corpus Petition has been filed by the detenu.

4. Dr.R.Alagumani, learned counsel appearing for the petitioner would submit that representations submitted to the Government as well as to the Advisory Board, through the Central Prison, for revoking the order of detention were not at all forwarded to the Government and Advisory Board and as such, the representations were not considered and hence, the detenu is deprived of his personal liberty guaranteed under Article 22(5) of the Constitution of India and therefore, prays for quashment of the order of detention passed by the second respondent.

5.Per Contra, Mr.K.Chellapandian, learned Additional Advocate General, assisted by Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State would submit that the order of detention was passed in accordance with law and the representation dated 29.01.2019 was received by the detaining authority on 29.01.2019 and the same was duly replied on 09.02.2019 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 primordial submission made by the learned Counsel for the petitioner is that the representations of the detenu dated 29.01.2019 were not all forwarded to the Government and thereby, he was deprived of his personal liberty guaranteed under the Constitution of India.

8.According to the learned Additional Advocate General, the representation dated 29.01.2019 was received by the detaining authority on 01.02.2019 from the Superintendent, Central Prison, Madurai and the detaining authority, in turn, called for remarks from the sponsoring authority on 08.02.2019 and after receiving the



remarks from the sponsoring authority on 09.02.2019, the said representation was rejected by reply dated 09.02.2019.

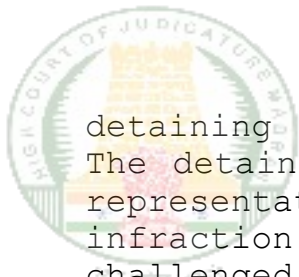
9. According to the learned Counsel for the petitioner, the detaining authority is not entitled to consider the representation on merits, after the order of approval passed by the Government. The fact remains, his representation dated 29.01.2019 was considered only on 09.02.2019 and the Government has approved the order of detention on 03.02.2019 and as such, the detaining authority, after the order of approval, has become functus officio and he is not entitled to consider the said representation. It is also submitted that the representations, which were addressed to the Government and the Advisory Board were not forwarded by the detaining authority to the respective authorities.

10. A proforma was also filed by the Under Secretary to Government that the representation dated 29.01.2019 was received by the detaining authority before the order of approval and the same was replied by the detaining authority on 09.02.2019. However, there was no reference about the consideration of the Government on the said representation dated 29.01.2019.

11. The detaining authority in paragraph No.7 of the grounds of detention has specifically mentioned that the detenu is having a right to make his representation in writing, against the order of detention, to the detaining authority as well as to the State Government and to the Chairman, Advisory Board through Central Prison, where he is detained.

12. The order of detention under Section 3(2) of the Tamil Nadu Act 14, was passed on 23.01.2019. It was approved by the Government under Section 3(3) of the said Act, on 03.02.2019. The representation of the detenu dated 29.01.2019 was received by the detaining authority only on 01.02.2019 and even before he called for remarks from the sponsoring authority on 08.02.2019, the order of detention was approved by the Government on 03.02.2019 and as such, the detaining authority is not having any power to review the order of detention based on the representation.

13. A similar issue was raised in Sri Anand Hanumathsa Katkare Vs Additional District Magistrate and others, reported in (2006) 10 SCC 725, wherein an order of detention passed under the Karnataka Prevention of dangerous Activities of Boot-leggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1985, was put to challenge before the High Court of Karnataka, on the ground that the detaining authority became functus officio, the High Court rejected the plea that there is no provision in the Act to show that the role of the detaining authority comes to an end, after making an order and as per the relevant provision, i.e., Section 3(3) of the Act, State Government, which has empowered the



detaining authority, assumes the role of the detaining authority. The detaining authority made the detenu aware of his right to make representation to the State Government and therefore, there was no infraction. This Judgment of the High Court of Karnataka was challenged before the Hon'ble Supreme Court on the ground that the detaining authority became functus officio, the moment the State Government accords approval and therefore, the detaining authority should not have dealt with the representation and should have referred the matter to the State Government and the Hon'ble Supreme Court has held that while dealing with a habeas corpus application, undue importance is not to be attached to technicalities, but at the same time where the court is satisfied that an attempt has been made to deflect the course of justice by letting loose red herrings the Court has to take serious note of unclean approach and if really the citizen concerned genuinely and honestly felt or is interested in getting an expeditious consideration or disposal of his grievance, he would and should honestly approach the really concerned authorities and would not adopt any dubious devices with the sole aim of deliberately creating a situation for delay in consideration and cry for relief on his own manipulated ground, by directing his representation to an authority which is not directly/ immediately concerned with such consideration.

14. In the said decision, the Hon'ble Supreme Court, relying upon the decision in R.Keshava v. M.B.Prakash, reported in (2001) 2 SCC 145, has held as follows:

"10. Therefore, the Detaining Authority becomes functus officio the moment the approval is accorded by the State Government. It is to be noted that the order of detention can be revoked only on the basis of a representation to the appropriate authority. This fact is relevant.

... ..

13. It is undisputed that in the grounds of detention it was specifically indicated to the appellant that if he wanted to represent to the Government of Karnataka he was to submit the same directly to the Government through the Superintendent of the Central Jail in which he is detained.

14. Above being the factual position, the judgment of the High Court is irreversible. The appeal is sans merit and is dismissed."

15. In R.Keshava's case (cited supra), it has been held as follows:

"17. We are satisfied that the detenu in this case was apprised of his right to make representation to the appropriate Government/authorities against his



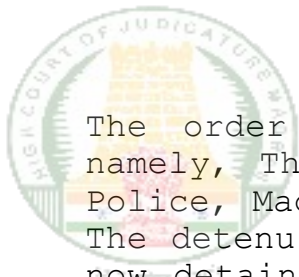
order of detention as mandated in Article 22(5) of the Constitution. Despite knowledge, the detenu did not avail of the opportunity. Instead of making a representation to the appropriate Government or the confirming authority, the detenu chose to address a representation to the Advisory Board alone even without a request to send its copy to the authorities concerned under the Act. In the absence of representation or the knowledge of the representation having been made by the detenu, the appropriate Government was justified in confirming the order of detention on perusal of record and documents excluding the representation made by the detenu to the Advisory Board. For this alleged failure of the appropriate Government, the order of detention of the appropriate Government is neither unconstitutional nor illegal."

16. But, in the case on hand, apart from submitting a representation to the detaining authority, the detenu has also made representation to the Government as well as to the Chairman, Advisory Board, as stated in the grounds of detention through Central Prison, Madurai, where the detenu is confined. But, the representations forwarded to the detaining authority were not placed before the Advisory Board as well as to the Government. The Under Secretary to Government in his proforma has relied upon the representation considered by the detaining authority, which explicitly shows that the representation sent by the detenu to the Government was not at all considered.

17. 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 callous attitude in consideration of the representations of the persons who are detained. Any unexplained delay would be a breach of constitutional imperative and it would render the continued detention of the detenu as illegal.

18. When the detenu has made representation to the Government as well as to the Advisory Board through the Central Prison, Madurai, where he is confined, it is obligatory on the part of the authorities concerned to place the representation before the concerned authorities to dispose of the same as early as possible. Admittedly, in this case, the representations, which were made to the Advisory Board and to the Government, were not placed before the concerned authority and thereby the detenu was deprived of this right as guaranteed under the Constitution and as such, the detention order is liable to be interfered.

19. In the result, the Habeas Corpus Petition is allowed.



The order of Detention passed by the second respondent herein, namely, The Commissioner of Police, Office of the Commissioner of Police, Madurai in 05/BCDFGISSSV/2019 dated 23.01.2019 is set aside. The detenu, namely, Kumarappan @ Ragul, aged about 41 years, who is now detained at Central Prison, Madurai 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 (CS-II)

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Sub Assistant Registrar(CS)

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai- 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P (MD) No.151 of 2019
29.08.2019

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