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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.168 of 2019

Kasirajan @ Kasi ... Petitioner

Vs.

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate,
Madurai District, 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 B.C.D.F.G.I.S.S.S.V.No. 04 of 2019 dated 31.01.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Kasirajan @ Kasi, son of Easwaran, aged about 26 years, now confined at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.K.Dinesh Babu,
Additional Public Prosecutor

O R D E R

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

The detenu himself is the petitioner herein and challenging the impugned order of detention dated 31.01.2019 passed by the second respondent, branding him as a Goonda 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.

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2.A perusal of the grounds of detention would disclose that the detention order came to be passed, based on a solitary case registered by Karuppayurani Police Station in Crime No.186 of 2018, for the commission of offence under Sections 147, 148 and 302 IPC. A perusal of the FIR would disclose among other things that according to the *defacto* complainant namely Nagendiran, a resident of Sethupathi Nagar, Panangadi, Madurai, he became aware of the cock fight programme and therefore, he and his younger brother went in a two wheeler and while they were returning, some persons came in a dark green colour car and intercepted them and a white car also dashed against the two wheeler of Aravind and he had fallen down and seven persons had stepped down and indiscriminately attacked him and as a consequence, he died on the spot.

3.The detenu and other co-accused surrendered before the Court of Judicial Magistrate No.II, Madurai and they were ordered to remanded into Police custody from 22.11.2018 to 23.11.2018 and thereafter, they were produced before the Court of Judicial Magistrate No.II, Madurai and they were ordered to be remanded into judicial custody up to 07.12.2018 and the case was also altered from under Sections 147, 148 and 302 IPC to 147, 148, 341, 109, 120(B) and 302 IPC read with Section 4 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. On 12.11.2018. The Detaining Authority, on a perusal and consideration of the materials, has derived the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public peace and order and as such, branded them as Goondas and detained them under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4.The learned Counsel for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that the detenu has submitted identical representations dated 04.02.2019 to the second respondent / the detaining authority, the Chairman of the Advisory Board as well as the first respondent for revocation of the order of detention.

5. It is the submission of the learned Counsel for the petitioner that though the said representation has been considered

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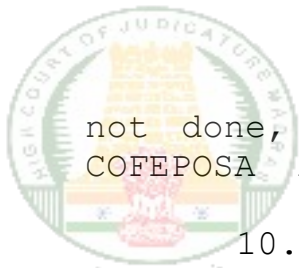
two representations submitted to the Advisory Board as well as the Government, have not been forwarded and on account of the non-forwarding of the representations, the detenu has lost his opportunity for consideration of his representations for revocation of the order of detention and the right guaranteed under Article 22(5) of the Constitution of India is also deprived of and challenging the impugned order of detention, the petitioner has come forward to file the present Habeas Corpus Petition.

6.Per contra, learned Additional Public Prosecutor appearing for the State would submit that since the representation dated 04.02.2019 submitted to the detaining authority, has been considered and rejected within a period of twelve days, it is not necessary to forward the representation / the contents, which are identical, to the Government as well as to the Advisory Board and the attention of this Court was also invited to the letter of the first respondent in No.26950/H.P & E (XVI)/2018, dated 14.11.2018, wherein it has been stated that if the representation received from the detenu within a period of twelve days has been considered by the detaining authority, the representation addressed to the Government as well as the Advisory board need not be forwarded.

7.In sum and substance, it is the submission of the learned Additional Public Prosecutor appearing for the State that since the detaining authority has already considered and rejected the representation without any loss of time, in the light of above cited letter dated 14.11.2018 of the first respondent, it is not necessary to forward the representation submitted to the Advisory Board and to the Government and therefore, prays for dismissal of this habeas corpus petition.

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

9.In **Agalya Bhai Vs. The State of Tamil Nadu**, reported in **1997 (III) CTC 486 (DB)**, the order of detention came to be passed under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 [COFEPOSA Act] and one of the grounds urged was that the failure of the Jail Superintendent to forward the detenu's representation to the Central Government, amounts to deprivation of the right of the detenu to have his detention revoked and in the said decision, it is also held that since the grounds of detention themselves would indicate that the detenu can represent to the Central Government and keeping in view of the right involved, the Jail Superintendent ought to have exhibited more alert in transmitting the said representation and the Division Bench, having found that it was



not done, quashed the impugned order of detention passed under COFEPOSA Act.

10.The Hon'ble Supreme Court in **Kamleshkumar Ishwardas Patel Vs Union of India and Others**, reported in [1995] 4 SCC 51, which also pertains to the order of detention passed under COFEPOSA Act, has held in paragraph Nos.30 and 31 that under Article 22(5) of the Constitution of India, the right of the person detained to make the representation against the order of detention comprehends the right to make such a representation to the Authority, which can grant such relief, ie., that authority which can revoke the order of the detention and set him at liberty and since the officer, who has made the order of detention is competent to revoke it, the person detained has the right to make a representation to the officer who made the order of detention.

11.The Hon'ble Supreme Court in **State of Punjab Vs Sukhpal Singh**, reported in [1990] 1 SCC 35, which pertains to the order of detention passed under the National Security Act, 1980, in paragraph Nos.15, 16 and 19, has held that "*the clear instructions in the grounds of detention that the detenu should address the representation to the State Government through the Superintendent of Jail, where he was detained should have been followed*".

12.Keeping in mind the principles enunciated in the above cited judgments, this Court has scanned and analysed the materials placed on record.

13.It is not in dispute that the detenu, apart from submitting the representation dated 04.02.2019 to the second respondent / the detaining authority, he has also submitted representations dated 04.02.2019 to the first respondent as well as to the Chairman, Advisory Board.

14.It is pertinent to extract the relevant portion of paragraph No.6 of the order of the detention dated 05.01.2019, which reads as follows:

"6. he has a right to make, representation in writing against the said detention order to the State Government and if he wishes to make any representation to the State Government, he should address it to the Additional Chief Secretary to Government, Home, Prohibition and Excise Department, Secretariat, Chennai - 9 through the Superintendent of Central Prison, Madurai in which he is detained, as expeditiously as possible. Further it is informed that he has a right to make representation to the Chairman, Advisory Board, 32, Rajaji



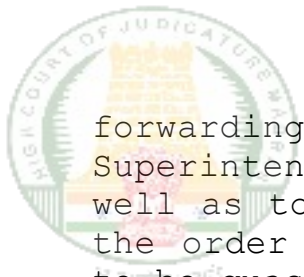
Salai, Singaravelar Maligai, Ground Floor (Backside entrance) Chennai Collectorate, Chennai - 600 001 through the Superintendent of Central Prison, Madurai. Any representation made by him to the Government, will be duly considered by the Government and will also be placed before the Advisory Board along with his case details, for consideration under Section 10 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Sexual Offenders, Slum Grabbers and Video Pirates, 1982. He is informed that he is entitled to be heard in person by the Advisory Board. He is requested to intimate to the Additional Chief Secretary to Government, Home, Prohibition and Excise Department, Secretariat, Chennai -9, Specifically in writing as expeditiously as possible, whether, he desires to be heard in person by the Advisory Board or not."

15.The primordial submission made by the learned Additional Public Prosecutor is that since the representation submitted by the detenu has been considered and rejected by the detaining authority within a period of twelve days, the forwarding of the representation to the Advisory Board as well as the State Government is only an empty formality for the reason that the contents of the representation are one and the same and the said Authorities may not also take a very different view from that of the detaining authority. In the considered opinion of this Court, such a submission lacks merit and substance, for the reason that paragraph No.6 of the grounds of detention also made it clear that apart from submitting a representation to the detaining authority within twelve days from the date of detention order, the detenu was also informed that he can make representations to the first respondent as well as to the Chairman, Advisory Board.

16.Admittedly, the detenu had submitted such representations to the Superintendent, Central Prison, in which the detenu is confined and it appears that the said representations addressed to the first respondent as well as to the Advisory Board, have not been forwarded.

17. In **Agalya Bhai's** case reported in **1997 (III) CTC 486 (DB)**, cited supra, in paragraph No.14, it is observed that "the failure of the Jail Superintendent to forward the detenu's representation to the Central Government amounts to deprivation of the right of the detenu to have his detention revoked."

18.The instructions issued by the first respondent vide letter dated 14.11.2018 are not in consonance with the settled position of law. In the considered opinion of this Court, the non



forwarding of the representations submitted by the detenu, through Superintendent of Prison, to the first respondent / Government as well as to the Chairman, Advisory Board, would definitely vitiate the order of detention. Therefore, the impugned order is liable to be quashed.

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19. 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, Madurai and Consequently, the detenu, namely, Kasirajan @ Kasi, aged about 26 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

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Sub Assistant Registrar(CS)

To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate,
Madurai District, 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.168 of 2019

24.07.2019

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