



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2019

CORAM

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**THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH**

H.C.P(MD)No.204 of 2019

Ponnangan,
son of Seeni Thevar
East Street,
Samuthuvapuram,
Reddiarchatram Village,
Dindigul West Taluk,
Dindigul District

(Now confining at Madurai Central Prison)

... Petitioner

.vs.

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

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

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

... Respondents

PRAYER: This Habeas Corpus Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, calling for the entire records connected with the Detention Order of the second respondent in Detention Order No.06/2019, dated 17.2.2019 and to quash the same and to direct the respondents to produce the body or person of the detenu by name Ponnangan, son of Seeni Thevar, aged about 57 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner
For Respondents

: Mr.R.Alagumani
: Mr.K.Dinesh Babu
Addl. Public Prosecutor

O R D E R

This Habeas Corpus Petition has been directed against the Detention Order No.06/2019, dated 17.2.2019.

2.The sponsoring Authority had recommended for the detention of the detenu on the ground that he is a habitual offender and there are two adverse cases of similar nature, pending against him and he is involved in similar offence, which impelled the Sponsoring Authority to recommend for the detention of the Petitioner/detenu.

3.The learned counsel for the Petitioner raised three grounds challenging the detention order passed by the second respondent.

4.The first ground that was raised by the learned counsel for the Petitioner is that even as per the Detention Order, the Detaining Authority was aware of the fact that the Petitioner did not file any bail petition before any Court in the ground case. In spite of the same, the Detaining Authority has come to the conclusion with regard to the imminent possibility of the Petitioner being released on bail only on the ground that in similar adverse cases, the Petitioner has already been granted bail. This, according to the learned counsel for the Petitioner, reflects the non application of mind and the learned counsel for the Petitioner relied upon the judgement of the Honourable Supreme Court in **Reka's case** to substantiate his submission.

5.The second ground that has been raised by the learned counsel for the Petitioner is that there is a discrepancy between the English and Tamil Version of the Detention Order.

6.The third ground that has been raised by the learned counsel is that there was a delay in considering the representation made by the detenu and therefore, the entire Detention Order is vitiated being violative of Article 22(5) of the Constitution of India.

7.In our considered view, the first ground that has been raised by the learned counsel for the Petitioner is not sustainable. It will be relevant to extract the portion of the judgment from **Rekas' case** referred supra for this purpose.

8. The relevant portions are extracted hereunder:

12. In *Rekha v. State of Tamil Nadu through Secretary to Govt. & Anr.*, (2011) 5 SCC 244, this Court while dealing with the issue held :

"7.A perusal of the above statement in Para 4 of the grounds of detention shows that no ~~detenu~~ have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date



of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused.....

10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground." (Emphasis added)

Thus, it is evident from the aforesaid judgment that it is not the similar case, i.e. involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.



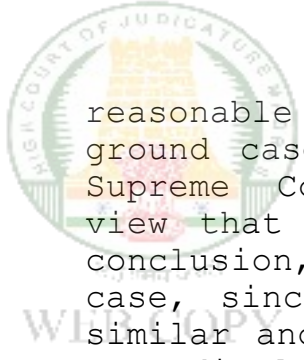
13. So far as the appellant's son is concerned, he had been arrested for the offence related to FIR No.53 (6) 2011 under Section 302 IPC read with Section 25(1-A) Arms Act dated 14.6.2011. The FIR had been lodged against unknown persons, however, appellant's son was arrested on 19.6.2011 in respect of the said offence. Subsequently, the detention order dated 30.6.2011 was passed by the District Magistrate under N.S. Act on various grounds, inter-alia, that the appellant's son was involved in extorting of money and giving shelter to underground members of unlawful association, namely, Kangleipak Communist Party vide notification published in the Gazette of India on 13.11.2009 as his activities were pre-judicial to the security of the State and maintenance of public order.

14. In support of the detention order, a large number of documents had been relied upon and supplied to the appellant's son including the copy of FIR No.254 (12) 2010 under Section 17/20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter called UA (P) Act) and copy of FIR No. 210 (5) 2011 under Section 20 of the UA (P) Act and released orders in those cases dated 13.12.2010 and 1.6.2011 respectively had been passed.

15. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law.

9. It is clear from the above that the Honourable Supreme Court has carved out an exception with regard to the case where the detenu has not filed a bail petition and the co-accused is granted bail for the very same offence. In such cases, the Honourable Supreme Court of India has held that the detaining authority can reasonably conclude regarding the likelihood of the detenu being released on bail.

10. In the present case, the detenu was involved in two adverse cases. The first adverse case in Crime No.63/2015 is very similar to the ground case. In that adverse case, the detenu had filed a bail petition and the same was allowed by the concerned Court. Therefore, the Detaining Authority has come to the conclusion that since the ground case is similar to the adverse case, there are



reasonable chance of the Petitioner being granted bail in the ground case also. Taking cue from the judgment of the Honourable Supreme Court of India referred to supra, We are of the considered view that the Detaining Authority was right in coming to such a conclusion, even though no bail petition was filed in the ground case, since the first adverse case and the ground case are very similar and the detenu was granted bail in the first adverse case. Accordingly, the first ground raised by the learned counsel for the petitioner stands rejected.

11.The second ground that was raised by the learned counsel for the Petitioner's with regard to the discrepancy found in the English and Tamil Version of the Detention Order, this submission also does not satisfy this Court. The discrepancy that was pointed out was very minor and it does not in any way materially affect the meaning that was conveyed in the Tamil version of the Detention Order and it has not in any way taken away the right of the Petitioner to make an effective representation. Therefore, this ground raised by the learned counsel for the Petitioner is also rejected.

12.The third ground that has been raised by the learned counsel for the Petitioner is with regard to the delay in considering the representation made by the detenu. The detenu made a representation on 20.3.2019 and the same was received by the department on 22.3.2019. The remarks were called for on 25.3.2019 and it was received on 4.4.2019 and on the same day, the file was submitted to the Under-Secretary, who on dealing with the same had passed it on to the Deputy Secretary. The Deputy Secretary had kept the file from 5.4.2019 and it was sent to the concerned Minister only on 30.4.2019 and ultimately the representation was rejected on 2.5.2019 and was informed to the detenu on 3.5.2019.

13.From the above chronology of events, it is seen that there is a delay of nearly 24 days while the Deputy Secretary was considering the file, after it was sent by the Under Secretary. Out of this 24 days, explanation was given only for 12 days, which happens to be Government holidays. For the balance 12 days, there is absolutely no explanation as to why there was a delay in considering the representation.

14.At this juncture, it will be relevant to rely upon the judgment cited by the learned counsel for the Petitioner in **Rajammal vs.State of Tamil Nadu and another reported in (1999) 1 Supreme Court Cases, 417.**

15.The relevant portions in the judgment is extracted hereunder:

''7.It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the



decision to be taken on the representation, the words 'as soon as may be' in clause(5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in *K.M. Abdulla Kunbi .vs. Union of India*. The following observations of the Bench can profitably be extracted here (SCC Page.484 para 12)

'It is a constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in clause(5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without any unavoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the detention law concerned, within which, the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal'.

8. The position, therefore, now is that if delay was caused on account of any differences or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation.. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.'

16. It is clear from the above judgment that unexplained delay in disposing of the representation would be a breach of the statutory mandate and it would render the continued detention impermissible. The Judgment of the Honourable Supreme Court will squarely apply to the facts of the present case. There is absolutely



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no explanation with regard to the delay of 12 days mentioned herein above and therefore, this Court finds that there has been a supine indifference and slackness in considering the representation which defeats the constitutional right granted to the detenu under Article 22(5) of the Constitution of India.

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17. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.06/2019, dated 17.02.2019, passed by the second respondent is set aside. The detenu, namely, Ponnangan, son of Seeni Thevar, aged about 57 years, is directed to be released forthwith unless his detention is not required in connection with any other case.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District,
Dindigul.
3. The Joint Secretary to Govt.,
Public(Law&Order),
Fort st. George, Chennai 9
4. The Superintendent of Prison,
Madurai Central Prison,
Madurai District
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN

H.C.P(MD) No.204 of 2019

04.09.2019

vsn

<https://hcservices.ecourts.gov.in/hcservices/>

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