



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

H.C.P. (MD)No.500 of 2019

P.Solaiammal ... Petitioner/Mother of detenue

Vs.

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

2.The Commissioner of Police,
Madurai City, Madurai

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

...Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, calling for the records in pursuant to the proceedings of the 2nd respondent in detention order in Cr.M.P.No.27/BCDFGISSSV/2019 dated 22.05.2019 quash the same and consequently direct the respondents to produce the detenu namely Marimuthu, S/o Pandi, aged 22 years, who is now detained in Central Prison, Madurai before this Court and set him at liberty.

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

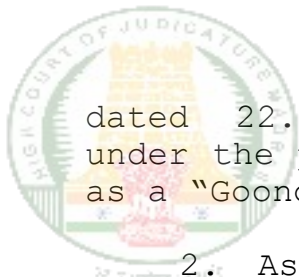
O R D E R

S.VAIDYANATHAN, J.

AND

N.ANAND VENKATESH, J.

Challenge is made to the order of detention passed by the
<https://hccs.courts.mysir.com/index> vide proceedings in Cr.M.P.No.27/ BCDFGISSSV/2019



dated 22.05.2019, whereby, the detenu was ordered to be detained under the provisions of the Tamil Nadu Act 14 of 1982, branding him as a "Goonda".

2. As per the grounds of detention, dated 22.05.2019, the detenu came under adverse notice in the ground case, which was registered in Crime No.71/2019 on the file of the El K.Pudur Police Station, who is the sponsoring authority, for offence under Sections 147, 148, 307, 302 of I.P.C. and 3(2) (v-a) SC/ST Act.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon'ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

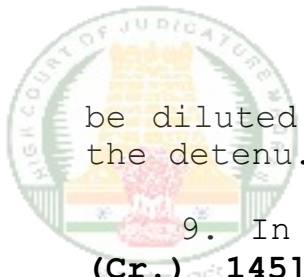
4. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. We have considered the above submissions.

6. In this case, the Detention Order was passed on 22.05.2019. As against the same, the petitioner made a representation on 04.06.2019. The remarks were called for by the Government from the Detaining Authority dated nil. The remarks were received on 10.06.2019. Thereafter, the Government considered the issue and passed the order rejecting the representation on 05.07.2019. There are totally 25 days delay in considering the representation. It is the contention of the petitioner that excluding 6 days towards public holidays, there was delay of 19 days in considering the representation.

7. Now, the question is as to whether on that score, the impugned order can be quashed.

8. In ***Rekha Vs. State of Tamil Nadu***, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further held that the procedural safeguards are required to be zealously watched and



be diluted on the basis of the nature of the alleged activities of the detenu.

9. In **Sumaiya Vs. The Secretary to Government, [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/detenu would be sufficient to set aside the detention order.

10. In **Tara Chand Vs. State of Rajasthan and others, [1980 (2) SCC 321]**, the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

11. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 19 working days and therefore, the impugned detention order is liable to be quashed.

12. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Cr.M.P.No.27/BCDFGISSSV/2019 dated 22.05.2019 is quashed. The detenu, namely, Marimuthu, S/o Pandi, aged about 22 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (AD II)

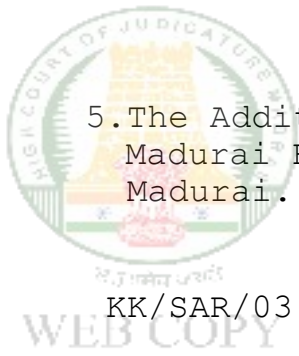
// True Copy //

Sub Assistant Registrar(CS)

sts

To

- 1.The Principal Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-9.
- 2.The Commissioner of Police,
Madurai City, Madurai
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Joint Secretary to Government,
Public(Law and Order),
Secretariat, Chennai-9.



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

H.C.P. (MD) No.500 of 2019
15.11.2019

KK/SAR/03.12.2019/4P-6C/