



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P.(MD) No.1604 of 2018

Selvam

... Petitioner

-vs-

1.The Additional Chief Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St.George, Chennai-600009

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

3.The Superintendent of Prison
Trichy Central Prison
Trichy

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order of the Respondent No.2 in Cr.M.P.No.22/2018 dated 09.10.2018 and quash the same and direct the Respondents to produce the body or person of the detenu by name Selvam, son of Suriyan, aged about 38 years, now detained at Trichy Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.M.Chandrasekaran
Additional Public Prosecutor

O R D E R

[Order of the Court was made by B.PUGALENDHI, J.]

The second respondent clamped an order of detention on 09.10.2018, as against Selvam, son of Suriyan, as the said Authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' and he has to be detained under Section 3(1) of Tamil Nadu
Act 14 of 1962 with a view to prevent him from acting prejudicial to the interest of public health and public order.



2. Challenging the order of detention, the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.R.Alagumani, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondents.

4. Learned counsel for the petitioner submitted that there is a delay of 38 days in considering the representation submitted by the petitioner, for which, no explanation justifying the delay has been attributed by the respondents. Therefore, the delay in considering the representation vitiates the order of detention.

5. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, 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.

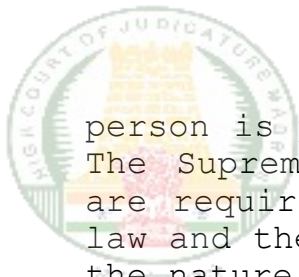
6. The learned counsel for the petitioner further submitted that though the bail application filed by the detenu in the ground case was pending, however, the detaining authority has referred to the bail granted to similarly placed person in the other case and held that there is a possibility of the detenu coming out on bail, which clearly shows non-application of mind and, therefore, the subjective satisfaction arrived at by the detaining authority is vitiated.

7. A perusal of the materials available on record reveals that the bail application filed by the detenu in the ground case was pending at the time of passing the detention order. However, the detaining authority has referred to bail granted to the similarly placed person in the other case and held that there is a possibility of the detenu coming out on bail. The said finding recorded by the detaining authority clearly reveals non-application of mind on the part of the detaining authority.

8. Further, in this case, the Detention Order was passed on 09.10.2018. As against the same, the petitioner made a representation on 31.10.2018. The remarks were called for by the Government from the Detaining Authority on 19.11.2018. The remarks were received only on 30.11.2018. Thereafter, the Government considered the issue and passed the order rejecting the representation on 21.12.2018. It is the contention of the petitioner that there was a delay of 38 days in considering the representation (23 days delay in receiving the remarks and 15 days delay in preparing the rejection letter).

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

9. In **Rekha Vs. State of Tamil Nadu**, [2011 (5) SCC 244], the 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 Supreme Court has further 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 of the detenu.

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10. 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.

11. In **Tara Chand Vs. State of Rajasthan and others, [1980 (2) SCC 321]**, the 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 Supreme Court as well as this Court.

12. Applying the said dictum laid down by the Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 38 working days and therefore, the impugned detention order is liable to be quashed.

13. The detention order passed by the second respondent detaining the detenu Selvam, son of Suriyan, made in Cr.M.P.No.22/2018, dated 09.10.2018, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith unless his custody is required in any other case.

Sd/-

Assistant Registrar (T AND P)

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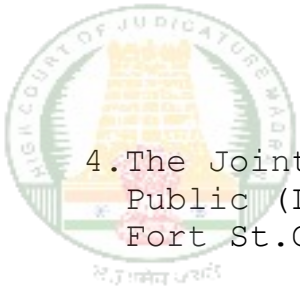
Sub Assistant Registrar(CS)

To:

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

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

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



4. The Joint Secretary to Government,
Public (Law and Order)
Fort St. George, Chennai 9.

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

H.C.P. (MD) No.1604 of 2018
22.04.2019

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