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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.04.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and**

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.1609 of 2018

Thangarasu

... Petitioner

-vs-

1.The Principal Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009

2.The District Collector and District Magistrate
Tiruchirappalli District, Tiruchirappalli

3.The Superintendent of Prison
Central Prison, Tiruchirappalli

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in Cr.M.P.No.34/2018 dated 02.11.2018 in detaining the detenu under Section 2(f) of the Tamilnadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu namely Manikandan, son of Thangarasu, male, aged about 22 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

For Respondents : Mr.M.Chandrasekaran
Additional Public Prosecutor

ORDER

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

The second respondent clamped an order of detention on 02.11.2018, as against Manikandan, son of Thangarasu, 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 1982 with a view to prevent him from acting prejudicial to the interest of public health and public order.

<https://hcservices.ecourt.gov.in/hcservices> 200 v. 100 services
Challenging the order of detention, the father of the detenu has come forward with the present habeas corpus petition.



3. Heard Mr.K.M.Karunakaran, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondents and carefully perused the records.

4. 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 was non-application of mind on the part of the detaining authority. According to the learned counsel, in Paragraph No.5 of the impugned detention order, the detaining authority has stated that the detenu, who is in remand in Jeeyapuram Police Station Crime No.116 of 2018 and Somarasampettai Police Station Crime No.126 of 2018, has not filed any bail application so far. However, the detaining authority has stated that there is a real possibility of the detenu coming out on bail by filing bail applications for the above cases before the appropriate court. Thus, according to the learned counsel, there is non-application of mind on the part of the detaining authority.

5. As rightly contended by the learned counsel for the petitioner, the detenu has not filed any bail application for the abovesaid cases, however, the detaining authority, in the impugned detention order, has held that there is a real possibility of the detenu coming out on bail by filing bail applications for the above said cases before the appropriate court. Even in the vernacular order, the same averment has been made. That apart, the detaining authority has not given any material to show that there is every likelihood of the detenu being released on bail in the cases cited supra.

6. At this juncture, it would be relevant to refer to the decision of the Supreme Court in **Rekha vs. State of Tamil Nadu**, [2011 (5) SCC 244], wherein, in Paragraph No.27, it has been held as follows:

"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. However, details of such alleged similar cases must be given, otherwise the bail statement of the authority cannot be believed."



Thus, on the above ground, the impugned detention order is liable to be set aside.

7. Further, 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 Supreme Court. Based on the same also, the learned counsel would plead for setting aside the detention order.

8. 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.

9. In this case, the Detention Order was passed on 02.11.2018. As against the same, the petitioner made a representation on 08.11.2018. The remarks were called for by the Government from the Detaining Authority on 13.11.2018. The remarks were received only on 16.11.2019. Thereafter, the Government considered the issue and passed the order rejecting the representation on 03.12.2019. It is the contention of the petitioner that there was a delay of 10 days in considering the representation.

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

11. 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.

12. 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.

13. 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.



14. 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 10 working days and therefore, the impugned detention order is liable to be quashed.

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15. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.34/2018 dated 02.11.2018, passed by the second respondent, is set aside. The detenu, namely, Manikandan, son of Thangarasu, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS-

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To:

- 1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Tiruchirappalli District, Tiruchirappalli.
- 3.The Superintendent of Prison,
Central Prison, Tiruchirappalli.
(In duplicate for communication to detenu)
4. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort.St.George, Chennai -9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.M.KARUNAKARAN, Advocate
(SR-64352[F] dated 30/04/2019)

H.C.P. (MD) No.1609 of 2018

30.04.2019