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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

H.C.P. (MD)No.635 of 2019

K.Mari

: Petitioner

Vs.

1.The State of Tamil Nadu,
rep by its Principal Secretary to Government,
Home, (Prohibition and Excise Department),
Secretariat, Chennai-9.

2.The District Collector/District Magistrate
Collectorate, Ramanathapuram
Ramanathapuram District.

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

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the entire records in detention order passed in P.D.No.09/2019 dated 02.07.2019 passed by the respondent No.2 herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely, Karthick (29/19) S/o.Karmegam, who is confined at Madurai Central Prison, Madurai District before this Court and set him at liberty.

For Petitioner
For Respondents

: Mr.T.Veerakumar
: Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

S.VAIDYANATHAN, J.

AND

N.ANAND VENKATESH, J.

Challenge is made to the order of detention passed by the second respondent vide proceedings in Detention Order in P.D.No.09/2019 dated 02.07.2019, 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 02.07.2019, the detenu came under adverse notice in one adverse case and in the ground case, which was registered in Crime No.166/2019 on the file of the Kenikarai Police Station, who is the sponsoring authority, for offence under Section 147, 148, 324, 302 and 201 IPC.

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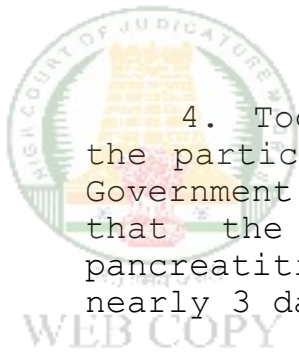
3.The detention order was passed only on 02.07.2019. A petition was filed for fixing an early date of hearing by citing medical grounds. This Court directed the Superintendent of Prison to get the medical report of the detenu. A report was filed before this Court and this Court passed the following order on 22.10.2019:

"The report of the Medical Officer from the Prison Hospital, Central Prison, Madurai, has been received and it shows that the detenu was admitted in the Prison Hospital from 17.10.2019 to 21.10.2019 with abdominal pain and he was treated. The detenu now is said to be physically stable. The medical report further states that if the complaint persists, he can be referred to the Government Rajaji Hospital, Madurai for further treatment.

2.The learned counsel for the petitioner submitted that this is not the first occasion, where the detenu is facing such a serious ailment and even on earlier occasions it happened and therefore, the detenu requires a better treatment, since the ailment is very serious. The learned counsel further submitted that the jail authorities must be directed to receive the previous medical report of the detenu in order to ensure that proper treatment is given to the detenu.

3. In view of the medical report that has been submitted by the Medical Officer, we are convinced that the detenu is being properly taken care of in the Prison Hospital. The petitioner is at liberty to handover the earlier medical records to the Prison authorities in order to ensure that proper treatment is given to the detenu inside the prison. We will keep this petition pending for some more time to see, if any other medical emergency arises, further orders can be passed in this petition. If required the Medical Officer of the Prison Hospital shall also ascertain the condition of the detenu by getting medical fitness/a disease diagnosis certificate from a medical/surgical Gastroentriologist supported by clinically accepted investigative profile, which includes blood test, CT Scan etc.

4.Post this case on **31.10.2019.**"



4. Today, the learned Additional Public Prosecutor submitted the particulars as forwarded by the department of General Surgery, Government Rajaji Hospital, Madurai. It is seen from the record that the detenu is facing an acute edamatus intestinal pancreatitis and he developed an abdominal pain and was vomiting for nearly 3 days.

5. The learned counsel for the petitioner submitted that the detenu is in a very serious condition and, on top of it, the Government Doctors have gone on a boycott and therefore, there is a large scale disruption in the medical services across the State. Therefore, the learned counsel requested this Court to take up this case immediately on medical grounds and consider the case on its own merits.

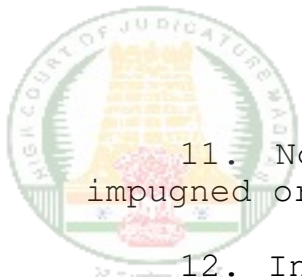
6. This Court, after satisfying itself with the medical condition faced by the detenu, is inclined to take this Habeas Corpus Petition out of turn on a priority basis. This Court had taken the extraordinary situation that is prevailing in this case and this case cannot be taken as a precedent for any other case.

7. 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.

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. We have considered the above submissions.

10. In this case, the Detention Order was passed on 02.07.2019. As against the same, the petitioner made a representation dated nil. The remarks were called for by the Government from the Detaining Authority on 08.08.2019. The remarks were received on 13.08.2019. Thereafter, the Government considered the issue and passed the order rejecting the representation on 19.09.2019. There are totally 37 days delay in considering the representation. It is the contention of the petitioner that excluding 14 days towards public holidays, of 23 days in considering the representation.



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

12. 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 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.

13. 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.

14. 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.

15. 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 23 working days and therefore, the impugned detention order is liable to be quashed.

16. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in P.D.No.09/2019 dated 02.07.2019 is quashed. The detenu, namely Karthick, S/o.Karmegam, male aged 29 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 (CS-III)

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Sub Assistant Registrar(CS)

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To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
- 2.The District Collector/District Magistrate
Collectorate,
Ramanathapuram
Ramanathapuram District.
- 3.The Superintendent of Central Prison,
Madurai Central Prison,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.VEERA KUMAR, Advocate SR-95392.

Order made in
H.C.P. (MD) No. 635 of 2019
Dated: 31.10.2019

CS(14.11.2019) 5P 6C