

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

H.C.P.No.300 of 2020

A.Munni

... Petitioner

Vs

1.The State of Tamil Nadu,
rep. By its Secretary of Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The Commissioner of Police,
Salem City.

3.The Superintendent,
Central Prison,
Salem - 7.

.... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the entire records leading to the detention of Petitioner's son Sallem @ Saleem Basha, aged 30 years, son of Anzar Basha, Mohammed Kasim Street, Fort, Salem 636 001, presently detained in Central Prison, Salem, under Act 14/1982, as a "Goonda" vide the detention order dated 28.01.2020 in C.M.P.No.3/ "Goonda"/Salem City/2020 on the file of the 2nd respondent herein, directing to produce the person or body of the detenu before this Court and thereafter set him at liberty from the Central Prison, Salem by set aside the above order.

For Petitioner
For Respondents

: Mr.B.Vasudevan.
: Mr. R. Prathap Kumar,
Additional Public Prosecutor.

O R D E R

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

2.The Mother of the Detenu has filed this Petition challenging the Detention Order passed by the Second Respondent in C.M.P.No.3/ "Goonda"/Salem City/2020 dated 28.01.2020 as he has got four adverse cases registered against him apart from the ground case.

3.Heard Mr.B.Vasudevan, learned Counsel appearing for the Petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents.

4.It is seen from the records that the representation sent on behalf of the detenu has not been considered within time frame and there is a delay of 6 days in considering and disposing of the representation.

5.In the decision in "C.Muthuvali Vs. The Principal Secretary to Government, Home Prohibition and Excise Department, Government of Tamil Nadu, Secretariat, Chennai - 600 009" reported in "[(2017) (1) MWN (Cr.) 270 (DB)]" it has been held that an unexplained delay of nine working days on the part of the Government in considering the representation rendered the detention illegal. Another Division Bench of this Court in "Samaiah Vs.The Secretary to Government" reported in "[(2007) (4) MWN (Cr.) 145]" has held that an unexplained delay of three days in disposal of the representation made by the detenu would be sufficient to set aside the detention order.

6.Further, a larger Bench of the Supreme Court in "Rekha Vs. The State of Tamil Nadu" reported in "2011 5 SCC 244" has held that "Preventive detention is by nature repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). However, Article 22(3) (b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles".

7.Since there is an unexplained delay in considering the representation submitted by the detenu, the detention order passed by the second respondent is liable to be set aside.

8.Accordingly, the detention order passed by the Second Respondent in C.M.P.No.3/ "Goonda"/Salem City/2020 dated

28.01.2020 is quashed and the Habeas Corpus Petition is allowed. The detenu viz., Saleem @ Saleem Basha, aged 30 years, son of Anzar Basha, who is confined at Central Prison, Salem is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The State of Tamil Nadu,
rep. By its Secretary of Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 9.
- 2.The Commissioner of Police,
Salem City.
- 3.The Superintendent,
Central Prison,
Salem - 7.
- 4.The Joint Secretary
Public (Law and Order) Department
Fort St.George
Secretariat
Chennai - 600 009.
- 5.The Public Prosecutor,
High Court of Madras,
Chennai.

H.C.P.No.300 of 2020

RCD(CO)
RV(01/09/2020)

WEB COPY