

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.2513 of 2019

Indra, F/A 48 years,
Wife of Arumugam,
No.45, 42nd Block, Ezhil Nagar,
Kannagi Nagar,
Chennai 600 097. Petitioner

-vs-

1.The State of Tamil Nadu,
Rep. by its Secretary to Govt.,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai 7. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records leading to the detention of the Petitioner's Son Rajesh Son of Arumugam, male aged about 23 years is presently lodged in Central Prison Puzhal at Chennai, who has been detained under Act 14/82 as a "Goonda" vide detention order dated 05.10.2019 on the file of the 2nd respondent herein, made in BCDFGISSSV No.651/2019 and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Puzhal, Chennai.

For Petitioner :Mr.Parthiban
for Mr.M.Rajavelu

For Respondents:Mr.R.Prathap Kumar
Additional Public Prosecutor

O R D E R

(Order of the Court was delivered by N.KIRUBAKARAN, J.)

This petition has been filed challenging the detention order passed by the 2nd respondent against the son of the petitioner under Act 14 of 1982, terming him as a Goonda by order dated 05.10.2019.

2.The petitioner's son Mr.A.Rajesh was arrested in adverse case under Section 302 of IPC on 08.09.2019 and was ordered to be remanded to Judicial custody till 23.09.2019. He was shown as accused on 23.09.2019 in the ground case under Section 294(b), 336, 427, 392, 506 (ii) of IPC. Challenging the said order only the present petition has been filed.

3.Mr.Parthiban, learned counsel appearing on behalf of the petitioner would assail the detention order on the following grounds:

- (i)Wrong statements have been made contrary to the facts in the detention order.
- (ii)Non satisfaction of the authority with regard to probability of accused coming out of jail, while passing the detention order.
- (iii)Typographical errors found in the detention order would vitiate the detention order.
- (iv)The representation given by the detenu or his representative has not been disposed off in time and there is a delay.

4.Mr.R.Prathap Kumar, learned Additional Public Prosecutor would defend the detention order stating that merely because wrong date has been given with regard to judicial custody of the detenu in the detention order, it will in no way prejudice the rights of the detenu. Secondly, he would submit that there is a possibility of the detenu coming out on bail, irrespective of the fact that whether the bail petition is pending or not or similarly placed accused, in respect of similar offence have come out on bail. It is contended that the arrest information was given to the mother of the detenu in the adverse case and in the ground case, the detenu himself has been informed. Therefore, he would support the order of detention. Regarding the delay the Additional Public Prosecutor would submit that there is no delay in disposing of the representation.

5.A perusal of the record would show that representation is dated 05.11.2019 and was received only on 08.11.2019. It is seen from the proforma filed by the first respondent that there is 2 days delay between 08.11.2019 & 13.11.2019 as 2 days were holidays. Similarly there is 7 days delay between 15.11.2019 & 27.11.2019 as 4 days were holidays. Therefore, there is a delay of nine days. Delay in disposing of the representation clearly vitiates the detention order.

6.The Act is not a new one and it is as old as 38 years. Similarly, the law is settled with regard to grounds on which the detention order could be set aside. All the authorities are aware of the Act and position of law. When that is the position, this Court is unable to understand as to how very routinely delay is caused in disposing of the representations given by the detenu or their relatives inspite of the settled proposition of law. This Court is of the opinion that there

is deliberate attempt on the part of the officials or the stakeholders to see that the detention order passed by the detaining authorities is vitiated and persons who are detained under Goondas Act or any other Act are released.

7. Though in this case counter has been filed, it has also come to the knowledge of this Court that in many matters, the detaining authorities are not filing counter affidavits in time. If in future, any of the detaining authority does not file counter affidavits in time, this Court will be compelled to summon those authorities.

8. It is made clear that this Court sets aside the detention order only on the ground of delay and this Court has not considered any other grounds which have been urged very effectively by Mr. Parthiban, learned counsel appearing on behalf of the petitioner. However, this Court would consider those points in any other appropriate cases.

9. Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent on 05.10.2019 in BCDFGISSSV No.651/2019 is hereby set aside. The detenu, viz., Rajesh Son of Arumugam who is now confined at Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

10. The purpose of detention is only to see that the detenu does not come out on bail and repeat commission of offences. When that is the laudable purpose, this Court is unable to understand as to how the orders are passed negligently and the procedures are not followed properly. Therefore, persons responsible for lapses have to be dealt with firmly. This Court has been seeing that on one ground or other, the detention order is set aside, inspite of settled position of law.

11. In view of the above, the first respondent is to answer the following queries:-

1. How many detention orders have been passed for the past 10 years? [year wise details have to be given]
2. How many detention orders have been challenged before the Court for the past 10 years? [year wise details have to be given]
3. How many detention orders have been set aside by the Court for the past 10 years? [year wise details have to be given]
4. What are all the grounds on which detention orders have been set aside?
5. Which is the main ground on which the detention orders have been set aside?
6. How many High Court orders quashing the detention orders have been challenged by the State before the Hon'ble Supreme Court?

7. Whether stage wise responsibility is fixed on the officials in passing the detention orders?
8. Whether action has been taken against the officials for their lapses in following the procedures in detention matters?
9. How many officials have been proceeded with so far for their lapses?
10. How much is being spent by the State for detaining a person under Act 14 of 1982?

12. The respondents shall answer the above queries and file a report on 06.07.2020

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The State of Tamil Nadu,
Rep. by its Secretary to Govt.,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.

2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai 7.

3. The Superintendent,
Central Prison (Puzhal),
Chennai, सत्यमेव जयते

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

5. The Public Prosecutor,
High Court, Madras 104.

H.C.P.No.2513 of 2019

RGN(CO)
EU 22.06.2020