

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P.No.2784 of 2019

V.Narayanan ... Petitioner/father of the detenu

Vs

The State represented by its

1.The Principal Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Tamil Nadu Secretariat,
Fort St.Geroge,
Chennai - 600 009.

2.The Commissioner of Police,
Salem District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus to calling for the records pertaining to the order of detention dated 22.11.2019 passed by the 2nd respondent in C.M.P.No.50/2019 and quash the same and produce the detenu, Manikandan aged about 22 years, S/o.Narayanan detained at Central prison, Salem, before this Court and set him at liberty and the detenu now has been confined at Central Prison, Salem.

For Petitioner : Dr.S.Manoharan.

For Respondents: 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 Father of the detenu has filed this Petition challenging the detention order passed by the Second Respondent against his son in C.M.P.No.50/Goonda/Salem City/2019 dated 22.11.2019 under the Tamil Nadu Act 14 of 1982, terming him as

'Goonda', as he has got an adverse case registered in Crime No.563 of 2019 for the offence under Sections 294 (b) 354 (A), 323, 342, 376, 506 (i) of Indian Penal Code read with Section 66 of Information Technology Act, 2000 for uploading the rape recordings of one lady who was raped by his co-accused Mohanraj and the ground case registered in Crime No.601 of 2019 for the offence under Sections 392 read with 397 and 506 (ii) of Indian Penal Code.

3.Heard Dr.S.Manoharan, learned Counsel appearing for the Petitioner and Mr. R. Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents.

4.The learned Counsel for the Petitioner submitted that the similar case which has been referred in Paragraph No.6 of the detention order is not similar in nature. Secondly, he submitted that there is no imminent possibility of coming out on bail as the detenu has not filed any bail petition. Thirdly, he submitted that there was a delay in disposing of the representation sent on behalf of the detenu. He relied upon the decision of Division Bench of this Court in "Samaiah Vs.The Secretary to Government" reported in "[(2007) (4) MWN (Cr.) 145]" in which it has been 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. Another decision of a larger Bench of the Supreme Court in "Rekha Vs. The State of Tamil Nadu" reported in "2011-5 SCC 244" is referred in which it has been 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". Hence, the learned Counsel for the Petitioner submitted that 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.

5.Further, the learned Counsel for the Petitioner relied upon various Judgments viz., the Judgment of the Division Bench of this Court in the case of "Latha Vs.State of Tamil Nadu" and the Judgment of the Division of this Court in the case of "Amsavalli Vs.State of Tamil Nadu" and the Judgment in the case of "State of Tamil Nadu Vs.Nagaraj" and submitted that the detenu is only co- accused and not the main accused and he has not involved in the said offence. His role is very limited and

hence, sought for allowing this Petition.

6. However, the learned Additional Public Prosecutor opposed the contentions of the learned Counsel for the Petitioner and defended the detention order. With regard to the contention of the learned Counsel for the Petitioner that the similar case referred in the detention order is not similar in nature, he submitted that only the substantial sections of the cases have to be seen and compared. The similar case referred by the detaining authority, is the case in Crime No.693 of 2018 which has been registered for the offence under Sections 392 read with 397 and 506 (ii) of Indian Penal Code and the same is similar to the ground case registered against the detenu for the offence under Sections 392 read with 397 and 506 (ii) of Indian Penal Code. Therefore, the detaining authority is satisfied that the similar case referred in the grounds of detention is similar in nature and hence, the contention of the learned Counsel for the Petitioner is liable to be rejected. This Court agrees with the submission of the learned Public Prosecutor.

7. With regard to the imminent possibility of coming out on bail, the learned Additional Public Prosecutor submitted that it is true that bail petition has not been filed by the detenu. However, it does not prevent the detenu in filing bail petition in future and always the said right is available with the detenu. Secondly, he submitted that the imminent possibility of coming out on bail has to be decided based on the gravity of the offence as laid down by the Hon'ble Supreme Court in Union of India and Another -vs- Dimple Happy Dhakad reported in '2019 SCC OnLine SC 875'. The learned Additional Public Prosecutor also relied upon the Judgment of the Hon'ble Supreme Court of India in the case of "Union of India (UOI) -vs- Ankit Ashok Jalan" reported in "MANU/SC/1609/2019" in which the above said Judgment has been followed by the Full Bench of the Hon'ble Supreme Court of India. Hence, he submitted that in view of the above said Judgments, the ground raised by the learned Counsel for the petitioner is liable to be set aside.

8. With regard to the delay in disposing of the representation, the learned Additional Public Prosecutor submitted that the materials have to be collected from various authorities and the same has to be gone through by the authorities concerned and hence, there is a delay in disposing of the representation. However, he submitted that the delay is due to administrative reasons which could be explained and the delay is neither wilful nor wanton. Hence, he contended that the said ground raised by the learned Counsel for the Petitioner is also liable to be set aside and thus, sought for dismissing the petition.

9.Though the learned Counsel for the Petitioner has relied on various Judgments, this Court is convinced with the submissions made by the learned Additional Public Prosecutor regarding the contentions of the learned Counsel for the Petitioner and the explanations submitted by the learned Additional Public Prosecutor with regard to the delay in disposing of the representation sent on behalf of the detenu.

10.Hence, this Habeas Corpus Petition is dismissed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Tamil Nadu Secretariat,
Fort St.Geroge,
Chennai - 600 009.
- 2.The Commissioner of Police,
Salem District.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai.

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GJ(CO)
GN(08/10/2020)

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