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**H.C.P.(MD) No.21 of 2020**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 05.10.2020**

**CORAM:**

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**

**and**

**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

**H.C.P.(MD) No.21 of 2020**

Vasuki

... Petitioner/Mother of the detenue

-vs-

1.The District Collector and District Magistrate  
Collectorate Office  
Karur District

2.The State rep.by  
The Additional Chief Secretary to Government  
Home, Prohibition and Excise Department  
Secretariat  
Chennai-9

3.The Inspector of Police  
K.Paramathi P.S.  
Karur District

4.The Superintendent  
Central Prison  
Trichy

... Respondents

**PRAYER :** Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus to call for records in Cr.M.P.No.27/2019, dated 09.12.2019 and to direct the respondents herein to produce the detenu Sudhakar, son of Late.Murugesan, aged 20 years, herein who has been termed as "Goonda" and now confined in Central Prison, Trichy and set aside the same and set the detenu at liberty.

For Petitioner : Mr.T.Senthil Kumar

For Respondents : Mr.K.Dinesh Babu  
Additional Public Prosecutor



**O R D E R**

**(Order of the Court was made by K.KALYANASUNDARAM, J.)**

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This habeas corpus petition has been filed by the mother of the detenu, namely, Sudhakar, son of Late.Murugesan, aged 20 years, against the detention order passed by the first respondent, in Cr.M.P.No.27/2019, dated 09.12.2019, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.

2. Though several grounds have been raised challenging the impugned detention order, Mr.T.Senthil Kumar, learned counsel for the petitioner, would mainly contend that the impugned order of detention is liable to be set aside on the grounds of failure to send intimation of arrest of the detenu either to his family members or his relatives and delay in considering the petitioner's representation.

3. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, submitted that the detention order has been rightly passed taking note of the activities of the detenu and it has been passed to prevent the detenu from indulging in similar activities in future. It is the further submission of the learned Additional Public Prosecutor that the the arrest of the detenu has been properly intimated to his family members and the delay in disposal of the representation has not caused any prejudice to the detenu and hence, prayed for dismissal of the habeas corpus petition.

4. We have heard the rival submissions and perused the materials placed on record.

5. In the case on hand, though it is contended by the learned Additional Public Prosecutor that the arrest of the detenu has been properly intimated to the family members of the detenu, a perusal of Page No.17 of the booklet would show that the arrest of the detenu in the ground case on 25.09.2019 was intimated to Cell No.9786498801, but there is nothing on record to show that said cell number belongs to the family members or relatives of the detenu. This Court, following the decision of the Honourable Apex Court in the case of ***D.K.Basu vs. State of West Bengal***, reported in ***AIR (1997) SC 610***, in several cases, has consistently held that if there is no proper intimation of arrest of the detenu either to his family members or his relatives, his valuable rights would be seriously prejudiced on the sense that they will not have the opportunity to



make effective representation to the Authority concerned in time for revocation of the detention order.

6. Further, it is seen from the proforma furnished by the learned Additional Public Prosecutor that the representation of the petitioner, dated 20.12.2019, was received on 26.12.2019. Remarks were called for on the same day i.e.26.12.2019 and it was received on 05.02.2020. The Deputy Secretary dealt with the matter on the same day i.e.05.02.2020. The concerned Minister dealt with the matter on 17.02.2020 and the representation came to be rejected on the same day i.e.17.02.2020. It is seen that in between 26.12.2019 and 05.02.2020, there was a delay of 25 days, after excluding the Government Holidays of 15 days, in considering the petitioner's representation.

7. At this juncture, it is useful to refer the decision of the Honourable Apex Court in the case of **Rajammal vs. State of Tamil Nadu and another**, reported in **1999 (1) SCC 417**, wherein the Apex Court has observed and held that it is for the Authority concerned to explain the delay, if any, in disposal of the representation and if any delay was caused on account of nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

8. In the case on hand, as stated supra, the delay of 25 days has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the grounds as stated above by following the decisions of the Honourable Apex Court referred supra.

9. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the first respondent, in Cr.M.P.No.27/2019, dated 09.12.2019, is set aside. Consequently, the detenu, namely, Sudhakar, son of Late.Murugesan, aged 20 years, who is now detained at Central Prison, Trichy, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

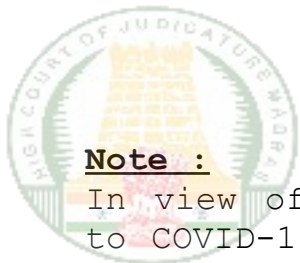
Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

krk



**Note :**

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

- 1.The District Collector and District Magistrate,  
Collectorate Office, Karur District.
- 2.The Additional Chief Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai-9.
- 3.The Inspector of Police,  
K.Paramathi P.S.,  
Karur District.
- 4.The Superintendent,  
Central Prison, Trichy.
5. The Joint Secretary to Government,  
Public (Law & Order), Fort Saint George, Chennai
- 6.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

**H.C.P. (MD) No.21 of 2020**  
**05.10.2020**

mr (CO)  
TR(29.10.2020) 4P 7C