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H.C.P.(MD) No.19 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.19 of 2020

Riswanabegum

... Petitioner

-vs-

1.State of Tamil Nadu,

Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.

2.The Commissioner of Police,

O/o the Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

3.The Superintendent,

Central Prison,
Tiruchirappalli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records in detention order passed in C.No.34/Detention/C.P.O/T.C/2019 dated 05.12.2019 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely, Bujji alias Imran, S/o Periasamy, male aged 24 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.K.Dinesh Babu

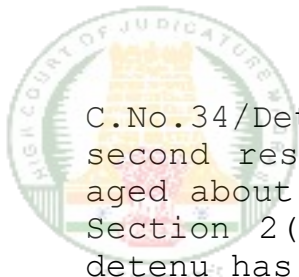
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

Heard Mr.K.A.S.Prabhu learned counsel for the petitioner and Mr.K.Dinesh Babu, learned Additional Public Prosecutor for the respondents and perused the materials available on record.

2.Challenging the order of detention in
<https://hcservices.ecourts.gov.in/hcservices/>



C.No.34/Detention/C.P.O/T.C/2019 dated 05.12.2019 passed by the second respondent, branding the detenu, namely, Bujji Alias Imran, aged about 24 years S/o Periasamy, as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982, the mother of the detenu has filed this habeas corpus petition.

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3. The learned counsel for the petitioner would submit that the detention order impugned in this habeas corpus petition is liable to be set aside on two grounds. Firstly, there was no proper intimation of arrest of the detenu in the third adverse case. He would further submit that the detenu came to be arrested in the third adverse case in Crime No.287/2019 and in the ground case in Crime No.292 of 2019 on 12.09.2019, but with regard to the third adverse case, there was no proper intimation. He would further submit that no details have been furnished particularly the cell number mentioned at page No.86 of the booklet, whether it belongs to the family members of the detenu or his relatives. It is also stated that the text of the SMS also not found in the booklet. In this regard, the learned counsel has placed reliance upon 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**. Secondly, there is unexplained delay in considering the representation of the petitioner, which would vitiate the detention order. In this regard, the learned counsel has placed reliance upon 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**.

4. Per contra, the learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, submitted that the Detaining Authority has arrived at the subjective satisfaction based on the materials placed by the Sponsoring Authority and there is no infirmity or irregularity in the impugned order of detention passed by the second respondent and hence, prayed for dismissal of the habeas corpus petition.

5. We have heard the rival submissions and perused the materials available on records.

6. Perusal of the arrest intimation form available at Page No.86 of the booklet shows that the arrest of the detenu in the third adverse case was intimated through SMS to the Cell No.9488035044. However, there is no material to show that the said Cell Number belongs to the family members of the detenu or his relatives and the text of the message is also not found place in the booklet.

7. This Court, following the decision of the Honourable Apex Court in the case of **D.K.Basu** (cited supra), 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 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.

8. Further, in the instant case, it is not in dispute that the detenu was detained by the order of the second respondent, dated 05.12.2019. Aggrieved over the same, a representation dated 02.01.2020 has been sent to the first respondent and the same was received on 06.01.2020 and on 07.01.2020, remarks were called for, but the remarks were received only on 20.01.2020. The Deputy Secretary dealt with the matter on 20.01.2020. The concerned Minister dealt with the matter on 22.01.2020 and thereafter, the detenu's representation was rejected on 24.01.2020. It is seen that there was delay of 12 days between 07.01.2020 and 20.01.2020. It is also seen that there are 7 Government holidays and after excluding the same, there is a delay of 12 days in considering the representation of the detenu.

9. In the case of **Rajammal vs. State of Tamil Nadu and another (1999 (1) SCC 417)** the Honourable Apex Court 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.

10. In the case on hand, there is absolutely no explanation for the delay of 12 days in considering the representation of the detenu. Hence, in our considered view, the detention order is liable to be set aside on the ground of delay also by following the decision of the Honourable Apex Court referred supra.

11. In view of that, the order of detention passed by the second respondent, in No.34/Detention/C.P.O/T.C/2019 dated 05.12.2019, is set aside and the habeas corpus petition is allowed. Consequently, the detenu, namely, Bujji Alias Imran, aged about 24 years S/o Periasamy, who is detained at Central Prison, Tiruchirappalli, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

skn

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

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presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.
- 2.The Commissioner of Police,
O/o the Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.19 of 2020
20.11.2020

SS (CO)

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