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H.C.P(MD) No.32 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.32 of 2020

Sermaraj

... Petitioner

-vs-

1.The Principal Secretary to Government

State of Tamil Nadu

Home, Prohibition and Excise (IX) Department

Secretariat

Chennai-600 009

2.The District Magistrate and District Collector

Office of the District Magistrate and District Collector

Virudhunagar District

3.The Superintendent of Prison

Palayamkottai Central Prison

Tirunelveli District

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying to call for the entire records, connected with the detention order of the Respondent No.2 in Cr.M.P.No.24/2019 (Goonda), dated 14.12.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Sermaraj, son of Ramakrishnan, aged about 26 years, now detained as "Goonda" at Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.V.Neelakandan

Additional Public Prosecutor

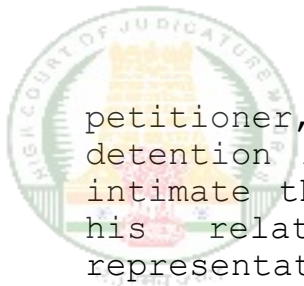
O R D E R

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

This habeas corpus petition has been filed by the detenu, namely, Sermaraj, son of Ramakrishnan, aged about 26 years, against the detention order passed by the second respondent, in Cr.M.P.No.24/2019 (Goonda), dated 14.12.2019, 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.R.Alagumani, learned counsel for the

<https://hcservices.courts.gov.in/hcservices/>



petitioner, would mainly contend that the impugned order of detention is liable to be set aside on the grounds of failure to intimate the arrest of the detenu either to his family members or his relatives and delay in considering the petitioner's representation.

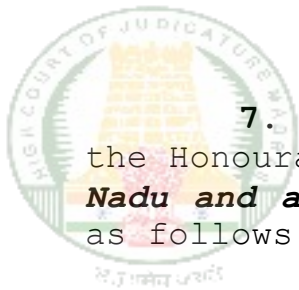
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3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, by referring to the counter affidavit filed by the second respondent, submitted that the detention order has been rightly passed by the second respondent taking note of the activities 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.344 of the booklet would show that the arrest of the detenu in the ground case on 12.11.2019 was intimated to Cell No.9944714952, 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 02.01.2020, was received on 07.01.2020. Remarks were called for on the same day i.e. 07.01.2020 and it was received on 03.02.2020. The Deputy Secretary dealt with the matter on 04.02.2020. The concerned Minister dealt with the matter on 04.02.2020 and the representation came to be rejected on 05.02.2020. It is seen that in between 07.01.2020 and 03.02.2020, there is inordinate and unexplained delay of sixteen days, after excluding the Government Holidays of ten 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 it is held as follows:

"7. It is a Constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the consideration for the decision to be taken on the representation, the words 'as soon as may be' in Clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is preempted from explaining the delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable caused. This position has been well delineated by a Constitution Bench of this Court in *M.M.Abdulla Kunhi v. Union of India*, 1991 (1) SCC (Cri) 613. The following observations of the Bench can profitably be extracted here: (SCC 484, Para 12)

"It is a Constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in Clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and dispose of with a sense of urgency without any avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the Detention Law concerned within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the Constitutional imperative and it would render the continued detention impermissible and illegal."

8. The position, therefore, now is that if delay was caused on account of nay indifference or



lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

8. In the case on hand, as stated supra, the delay of sixteen 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 second respondent, in Cr.M.P.No.24/2019 (Goonda), dated 14.12.2019, is set aside. Consequently, the detenu, namely, Sermaraj, son of Ramakrishnan, aged about 26 years, who is now detained at Palayamkottai Central Prison, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar(CS)

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.

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To:

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



2.The Joint Secretary to Government,
Public (Law&Order) Fort Saint George,
Chennai-9

3.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Virudhunagar District.

4.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.32 of 2020
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KB(03.09.2020) 5P 6C