



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.48 of 2020

Selvi

...Petitioner/Mother of the Detenu
-vs-

1.The State rep. by

The Principal Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.

2.The Commissioner of Police,
Tiruchirappalli City,
Trichy.

3.The Superintendent,
Central Prison,
Trichy.

4.The Inspector of Police,
Palakkarai P.S.,
Trichy City.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus to call for the records in C.No.36/Detention/C.P.O/TC/2019 dated 13.12.2019 and issue a writ, order or direction more particularly in the nature of Writ of Habeas Corpus or any other order or direction, directing the respondents herein to produce the detenu Vijaybabu son of Soundararajan aged 23 years who has been termed as "Goonda" and now confined in Central Prison, Trichy and set aside the same.

For Petitioner : Mr.T.Senthilkumar

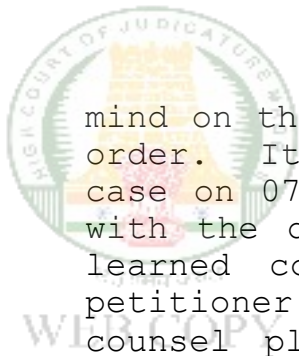
For Respondents : Mr.V.Neelakandan

Additional Public Prosecutor

O R D E R

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

The Habeas Corpus Petition has been filed by the mother of the detenu, namely, Vijaybabu son of Soundararajan aged 23 years, who has been branded as "Goonda" by the second respondent in C.No.36/Detention/C.P.O/TC/2019 dated 13.12.2019 as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. 2.Though several grounds have been raised to assail the detention order, Mr.T.Senthilkumar, learned counsel for the petitioner confines his arguments on the grounds of delay in passing the order of detention from the date of arrest of the detenu and lack of application of



mind on the part of the detaining authority in passing the impugned order. It is submitted that the detenu was arrested in the ground case on 07.09.2019, but the detention order came to be passed only with the delay of 97 days i.e., on 13.12.2019. According to the learned counsel, there is no live link between arrest of the petitioner and the order of detention. In this regard, the learned counsel placed on a decision reported in **2018(2) MWN (Cr.) 207 (Malarkodi vs. Principal Secretary to Government)**.

3.The learned counsel for the petitioner would further submit that since the detenu has not filed any bail application in the ground, there is no likelihood of the detenu coming out on bail and indulging in similar offences in future, hence, the subjective satisfaction reached by the Detaining Authority cannot be countenanced. In this regard, the learned counsel has placed reliance upon the decision of the Honourable Apex Court in the case of **Rekha vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244**.

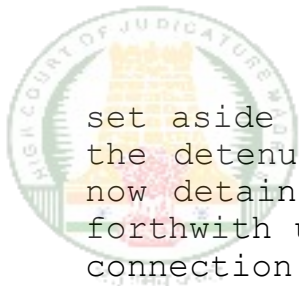
4.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents while reiterating the counter affidavit filed by the second respondent would contend that the detention order has been passed based on the cogent materials placed by the sponsoring authority and there is no illegality or irregularity in the order of detention. Hence, he prayed for dismissal of the Habeas Corpus Petition.

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

6.In the instant case, admittedly, the detenu was arrested on 07.09.2019 and the detention order came to be passed only on 13.12.2019. Absolutely, there is no explanation for the delay of 97 days in passing the detention order. It is true that no time limit has been prescribed in the Act, but this Court in the above referred case, has observed that such delays tend to have an affect of snapping the link between prejudicial activity and passing of preventive orders.

7.Perusal of the detention order shows that the detenu was arrested and he was remanded to judicial custody, but he has not moved any bail application. Further, paragraph 5 of the detention order shows that the detaining authority to arrive at a subjective satisfaction has stated that the detenu is likely to be released on bail under Section 167(2) of Crl.P.C, but to substantiate the same, no materials are available. Further, no similar case particulars has been referred in the detention order. The Honourable Apex Court in the case of **Rekha vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244** has held that when no bail petition is filed in the ground case, there is no likelihood of the detenu coming out on bail. Hence, in our opinion, the subjective satisfaction arrived at by the Detaining Authority is without any material and it shows non-application of mind on the part of the Detaining Authority and the decision referred supra would squarely apply to the case on hand.

8. In fine, the order of detention passed by the second respondent, in C.No.36/Detention/C.P.O/TC/2019 dated 13.12.2019, is



set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Vijaybabu son of Soundararajan aged 23 years , 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.

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Sd/-

Assistant Registrar ()

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

To

- 1.The Principal Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.
- 2.The Commissioner of Police,
Tiruchirappalli City,
Trichy.
- 3.The Superintendent,
Central Prison,
Trichy.
- 4.The Inspector of Police,
Palakkarai P.S.,
Trichy City.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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KB(14.08.2020) 3P 6C