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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P.(MD) No.65 of 2020

Kaleeswari

... Petitioner

-vs-

1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Madurai City,
Madurai.

3.The Inspector of Police,
Jaihindpuram Police Station,
Madurai City.
(Crime No.914 of 2019)

4.The Superintendent of Prison,
Central Prison,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus directing the respondents to produce the person or body of detainee namely, 'Saravanakumar' aged about 43/2019 years son of Patchaikani before this Court who is now detained in the Central Prison, Madurai in pursuant to the detention order passed by the 2nd respondent in No.102/BCDFGISSSV/2019 dated 27.12.2019 and to call for the records and quash the same and release the detainee at liberty forthwith.

For Petitioner : Mr.Niranjan S.Kumar

For Respondents : Mr.K.K.Ramakrishnan
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 challenging the detention order passed by the second respondent in No. 102/BCDFGISSSV/2019 dated 27.12.2019, wherein the petitioner's



husband Saravanakumar has been branded as "Sexual Offender" as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982.

2.The learned counsel for the petitioner Mr.Niranjan S.Kumar would argue that the detention order impugned in this habeas corpus petition is liable to be set aside on the grounds of non-furnishing of translated copies of the remand extension order; that the detention order has been passed after lapse of 41 days from the date of arrest of the detenu and that for violation of Section 10 of the Act, as the materials were not placed before the Advisory Board in time. It is also contended that there is an inordinate and unexplained delay in considering the representation of the detenu.

3.Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondents would contend that all the relevant materials were placed before the Advisory Committee in time and in this regard, the learned Additional Public Prosecutor relied upon page No.5 of the counter affidavit filed by the second respondent. It is further contended that the translation of remand extension order is not a relevant document, but it is only a referred to document and the live link between the arrest of the detenu and the order of detention has been snapped. It is the contention of the learned Additional Public Prosecutor that there is no time limit prescribed for passing the detention order, either in the Tamil Nadu Act 14 of 1982 or in the Constitution of India and the detention order can be passed even after release of the detenu on bail. He would add that the representation of the detenu was disposed of within a reasonable time and there is no delay in disposal of the representation. In this regard, the learned Additional Public Prosecutor relied on the decisions of the Hon'ble Apex Court in **State of Tamil Nadu vs. Abdullah Kadher Batcha [(2009) 1 SCC 333]**, **M.Mohamed Sulthan vs. Joint Secretary to Government of India [(1991)1 SCC 144]** and Full Bench of this Court in **G.Kalaiselvi Vs. State of Tamil Nadu [(2007)2 MLJ (Cr1) 1841]**.

4.The Hon'ble Apex Court had an occasion to distinguish the referred to document and the relied upon document in **(1991)1 SCC 144** (cited supra) and **(2009)1 SCC 333** (cited supra). In the **Abdullah Kadher Batcha's** case, it has been held that non-supply of relaxation order passed by the Chief Metropolitan Magistrate would not deprive the detenu's right to make a representation under Article 22(5) of the Constitution of India. In **M.Mohamed Sulthan's** case, it has been held that the Court has a duty to see whether the non supply of any document is in any way prejudicial to the case of the detenu. Merely because copies of some documents have been supplied they cannot by any stretch of imagination be called as relied upon documents and the same is extracted hereunder:-

"7. The Court has a duty to see whether the non supply of any document is in any way prejudicial to the case of the detenu. The High



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Court has not examined as to how the non supply of the documents called for had any effect on the detenu and/or whether non supply was prejudicial to the detenu. Merely because copies of some documents have been supplied they cannot by any stretch of imagination be called as relied upon documents.

5.In **(2007)2 MLJ (Cr1) 1841** (cited supra), wherein also the remand extension order was not supplied to the detenu. The Full Bench, after considering the Judgment of the Hon'ble Apex Court in **Pownammal vs. State of Tamil Nadu** reported in **1999 SCC (Cr1.) 231** has held as follows:-

"16.It is no doubt true that no person should be kept in custody unless there is an order of remand. However, where a person continues in custody notwithstanding the absence of an order of remand, the custody is apparently illegal and therefore there is enhanced possibility of such person being released. When a person is in custody by virtue of a valid order of remand, the only possibility of such person being released is on account of a bail order being passed or on account of such other similar events, such as quashing of the criminal case or even acquittal and the like. The relevant factor, therefore, is whether the person is in custody or not and if in custody, whether there is imminent possibility of being released. Whether the custody is legal or illegal is not at all a material because where custody is illegal, there is much stronger possibility of being released.

20.The above conclusion, however, is not the end of the road for the detenu. The detenu had filed a representation on 22.04.2007 seeking for a copy of the order of remand dated 30.03.2007. Such request was apparently turned down on the footing that in the grounds of detention sufficient reference had been made. The explanation which is now forthcoming from the side of the State to the effect that in fact there was an order of remand, which was passed by the Magistrate by visiting the jail, could have been also brought to the notice of the detenu when the detenu was specifically asking for a copy of such order of remand. It is not that the detenu was asking for copy of some document which was irrelevant on the face of it. It may be true that the detaining authority had not actually relied upon the remand order dated 30.03.2007 and, at any rate, the copy of the affidavit of the sponsoring authority had been furnished and in that sense it

<https://hcservices.ecourts.gov.in/hcservices/> said that there was violation of Article



22 of the Constitution of India by the fact that copy of order of remand dated 30.03.2007 had not been furnished along with grounds of detention. The question is whether , by denying to give copy of the remand order inspite of specific request by the detenu had the effect of vitiating the detention?

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21.Law is well settled that the detaining authority is required to give copies of the relied upon documents along with grounds of detention and non-furnishing of relied upon document has the effect of vitiating the order of detention. (See 1999 SCC (Crl.) 231 - Pownammal vs. State of Tamil Nadu and another). Where, however, a document is not relied upon, yet the detenu asks for copy of such document, which is either referred to or has got some bearing, it is the duty of the appropriate authority to furnish such copy or atleast indicate the reason why such copy is not supplied to the detenu inspite of specific request by the detenu. As already indicated, where a document asked for is on the face of it irrelevant, non-furnishing of such document is immaterial. Where, however, the document has got some relevance, refusal to supply such copy, inspite of specific request, without any valid reason, may have the effect of vitiating the order of detention as the detenu is likely to be prejudiced, inasmuch as he would not be in a position to make an effective representation."

6.In the instant case, perusal of the records would reveal that the detenu is already in judicial custody and the remand order was annexed in the booklet and the translated version is also furnished to the detenu. While narrating the later events, remand extension order was mentioned and it was annexed in the booklet, which shows that the remand extension order is only a referred to document and in the representation, the detenu did not sought for Tamil version of the remand extension order. In other words, the detenu has not stated as to how the non-furnishing of the translated version of the remand extension order caused prejudice to him. In the light of the decisions referred supra, we find no merit in the contention of the learned counsel for the petitioner in this regard.

7.Further, in this case, the detenu was arrested on 17.11.2019 and the detention order came to be passed on 27.12.2019. In page No.5 of the counter, it has been specifically stated that the relevant documents and grounds of the detention were sent to the Government on 30.12.2019 for placing it before the Advisory Board and the Advisory Board also conducted meeting on 05.02.2020. This shows that the materials were placed before the Government in time and meeting was also convened within the statutory period.



8. It is relevant to note that the Honourable Apex Court in the case of **Olia Mallick vs. State of West Bengal [1974 (1) SCC 594]**, has categorically held that mere delay in making the order is not sufficient to hold that the District Magistrate must not have been satisfied about the necessity of the detention order. The relevant portion of the said decision is extracted hereunder:

"4.Mr.Mittal who appeared as amicus curiae for the petitioner, relied principally on the fact that there has been a delay of about 5 months before the order of detention was passed. He pointed out that there were in all 3 incidents of conductor wire cutting and while the first 2 occurred in October, 71 the third occurred in November, 1971. Thereafter, it is pointed out, the detention order had been passed 5 months later. It is, therefore, contended that this very delay in passing the order would show that the order was passed not because the District Magistrate was satisfied that the detention was necessary but because he felt that the petitioner deserved to be punished as the police had failed to prove the criminal cases against him. In our opinion, mere delay in making the order is not sufficient to hold that the District Magistrate must not have been satisfied about the necessity of the detention order. The activities of the petitioner were extremely dangerous. The first ground shows that the petitioner along with his associates committed theft in respect of 1200 feet of overhead aluminium conductor wire due to which electric supply from Hizli Power Station to Egra suspended for 12 hours and there was complete chaos. The second incident is similarly of theft of 3000 ft. of overhead aluminium conductor wire and this resulted in the stoppage of electric supply for 14 hours Similarly in November, he and his associates made an attempt to cut overhead aluminium conductor wire from Hizli Belda Power Supply line and on this occasion the police caught him and his associates. It appears that the police filed criminal cases but without any results. Since the activities of the petitioner marked him out as a member of a gang indulging systematically in the cutting of a aluminium electric wire the District Magistrate could have been very well satisfied, even after the lapse of 3 months; that it was necessary to



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pass the detention order to prevent him from acting in a manner prejudicial to the maintenance of the supply of electricity. We are not, therefore, inclined to interfere in this matter merely because there has been a delay of 5 months before the detention order was passed."

9. In **Yogendra Murali vs. State of U.P., and others reported in (1988)4 SCC 559**, it has been held as follows:-

"6. We also do not find any merit in the plea that the impugned order is bad on account of delay. It is true that the ground which led the District Magistrate to pass the detention order became available in July and the order was passed only in December but it is not right to assume that an order of detention has to be mechanically struck down if passed after some delay. (See K. Aruna Kumari v. Government of Andhra Pradesh & Ors.. [1988] 1 SCC 296 and the cases mentioned there.)"

10. Further, the *pro forma* furnished by the learned Additional Public Prosecutor would reveal that between 04.11.2019 and 19.01.2019, there was Government Holidays i.e., Pongal Holidays and the representation of the detenu was disposed of on 20.01.2019. Hence, there is no delay in disposal of the representation also.

11. For the foregoing reasons, we find no merit in the contentions of the learned counsel for the petitioner. Hence, the habeas corpus petition is dismissed.

Sd/-

Assistant Registrar

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/ /2021

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 Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

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3.The Inspector of Police,
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4.The Superintendent of Prison,
Central Prison,
Madurai.

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

+1 CC to M/s Niranjan S.Kumar, Advocate, in SR.No.25642.

H.C.P. (MD) No.65 of 2020
14.12.2020

(NS) CO

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