



WEB COPY

H.C.P(MD) No.99 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.99 of 2020

Rajeshkanna

...Petitioner

-vs-

- 1.The Additional Chief Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009
- 2.The District Magistrate and District Collector
Office of the District Magistrate and District Collector
Dindigul District
- 3.The Superintendent of Prison
Madurai Central Prison
Madurai District-625 016

...Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus calling for the entire records connected with the detention order of the Respondent No.2 in Detention Order No.03/2020 dated 21.01.2020 and quash the same and direct the respondents to produce the body or person of the detenu by name Muthukumar, son of Tamilselvan, aged about 35 years, now detained as "Goonda" in Madurai Central Prison before this Court and set him at liberty forthwith.

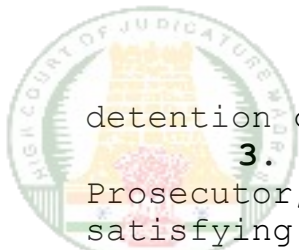
For Petitioner : Mr.R.Alagumani
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

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

This habeas corpus petition has been filed by the brother of the detenu, namely, Muthukumar, son of Tamilselvan, aged about 35 years, against the detention order No.03/2020 dated 21.01.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2. Mr.R.Alagumani, learned counsel for the petitioner, would submit that there was enormous delay in passing the detention order from the date of arrest of the detenu and the Detaining Authority has not applied its mind properly at the time of passing the



detention order.

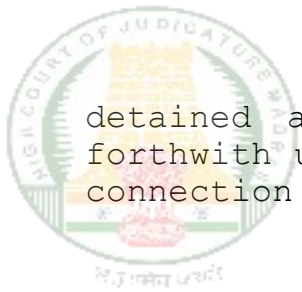
3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, would submit that the detention order has been passed on satisfying with the cogent and relevant materials produced by the Sponsoring Authority and there is no illegality or irregularity in the detention order warranting interference of this Court and also stated that there is no time limit prescribed in the Act for passing the detention order and hence, prayed for dismissal of the habeas corpus petition.

4. Heard the learned counsel on either side and perused the materials available on record.

5. In the matter on hand, it is not disputed that the detenu surrendered before the Village Administrative Officer, Pannuvarpatti, on 30.10.2019 and he was remanded to judicial custody and the impugned detention order came to be passed only on 21.01.2020, after a lapse of 82 days. It is true that there is no time limit prescribed in the Act for passing the detention order. However, this Court, in the case of **Malarkodi vs. Principal Secretary to Government**, reported in **2018 (2) MWN (Cr.) 207 (DB)**, has taken a view that there is no live link between the prejudicial act of the detenu and the order of detention. In the matter on hand, absolutely there is no explanation for the delay of 82 days in passing the order of detention.

6. Furthermore, in Paragraph No.5 of the detention order, it is stated that the detenu has filed anticipatory bail petition before the Special Court for SC/ST (POA), Dindigul, vide CrI.M.P.No.18 of 2020, in the ground case and the same was pending consideration. But, to arrive at the subjective satisfaction, the Detaining Authority has referred the bail granted to one Malik Batcha, son of Shajahan, vide order dated 27.09.2016 in CrI.O.P.(MD) No.17620 of 2016. It is further stated that there is a real possibility of the detenu coming out on bail in the ground case by filing bail petition before the higher Court. As rightly pointed out by the learned counsel for the petitioner, when the bail petition was pending consideration, the Detaining Authority has stated that there is a possibility of the detenu coming out on bail by filing bail petition before the higher Court, which shows non-application of mind on the part of the Detaining Authority. Hence, in our considered view, the detention order is liable to be set aside on the grounds of delay in passing the impugned detention order and non-application of mind on the part of the Detaining Authority, by following the decision referred supra.

7. In fine, the Habeas Corpus Petition is allowed. The detention order No.03/2020, dated 21.01.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Muthukumar, son of Tamilselvan, aged about 35 years, who is now



detained at Madurai 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 (AS)

// True Copy //

/ /2020

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 Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District-625 016.
- 4.The Joint Secretary to government,
Public (Law&Order),
Fort Saint George,
Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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KB(18.08.2020) 3P 6C

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