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H.C.P.(MD) No.103 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2020

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

H.C.P. (MD) No.103 of 2020

Thaya @ Thayanithi

... Petitioner/Detenu

-vs-

1.The Additional Chief Secretary to Government,
The State of Tamil Nadu,
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.

2.The District Collector and District Magistrate
O/o.The District Collector and District Magistrate
Ramanathapuram District.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... 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 second respondent in TN.P.D.A.B.C.D.F.G.I.S.S.S.V.No.02/Goonda/2020, dated 29.1.2020 and to quash the same and to direct the respondents to produce the body or person of the detenu by name Thaya @ Thayanithi, son of Balasubramanian, aged about 21 years, now detained as 'Goonda' at 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.)

The prayer in the Habeas Corpus Petition is to quash the order passed by the second respondent dated 29.1.2020 in TN.P.D.A.B.C.D.F.G.I.S.S.S.V.No.02/Goonda/2020, and to direct the respondents to produce the body or person of the detenu by name Thaya @ Thayanithi, son of Balasubramanian, aged about 21 years, now detained as 'Goonda' at Madurai Central Prison, before this Court and set him at liberty forthwith.

2.Heard Mr.R.Alagumani, learned counsel appearing for the Petitioner and Mr.V.Neelakandan, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

3. It is submitted by Mr.r.Alagumani, learned counsel for the petitioner that though the detention order has been assailed on several grounds, it is liable to be set aside on the ground of failure to intimate the arrest of the detenu either to his family members or his relatives . According to the learned counsel for the petitioner, the non-intimation of arrest would seriously affect the valuable rights of the detenu to make effective representation to the Authorities concerned for revocation of the detention order. It is submitted by the learned counsel for the petitioner that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India have not been followed in this case and there is unexplained and inordinate delay in disposal of the petitioner's representation, which would vitiate the impugned order of detention.

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 submit that the detention order has been passed by the Detaining Authority after satisfying with the materials placed by the Sponsoring Authority and there is no illegality or irregularity in the impugned detention order. Furthermore, the intimation of arrest of the detenu was given through SMS and hence, the rights of the detenu has not been affected in any manner.

5.In the instant case, the pro-forma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 03.02.2020 and it was received by the first respondent on 06.02.2020. Though the remarks were called for on the same day, it was received by the first respondent only on 17.2.2020 and after consideration by the ~~under Secretary~~ the Deputy Secretary and the concerned Minister,



eventually, the representation was rejected on 20.2.2020. It is to be noticed that between 6.2.2020 and 17.2.2020, there was a delay of 11 days and after excluding three Government Holidays, eight days of delay was not properly explained by the first respondent.

6. A perusal of the booklet at Page No.67 shows that the arrest of the detenu was informed to detenu's uncle by name Boominathan through SMS to the Cell No.9790560075. 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. 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 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.

7. In the light of the above facts and circumstances, we are convinced that the impugned detention order would not stand to the scrutiny of this Court and the same is, therefore, liable to be set aside.

8. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in TN.P.D.A.B.C.D.F.G.I.S.S.S.V.No.02/Goonda/2020, dated 29.1.2020, is set aside. Consequently, the detenu, namely, Thaya @ Thayanithi, son of Balasubramanian, aged 21 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsn

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 Additional Chief Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
- 2.The District Collector and District Magistrate
O/o.The District Collector and District Magistrate
Ramanathapuram District.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
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.

ORDER MADE IN
H.C.P. (MD) No.103 of 2020
24.08.2020

scr(CO)
TR(08.09.2020) 4P 6C