



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.08.2020

CORAM:

WEB COPY

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

H.C.P. (MD) No.114 of 2020

Ramasamy ... Petitioner/Father of the Detenu

-vs-

- 1.State of Tamil Nadu, rep. by
The Additional Chief Secretary to Government,
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,
Tiruchirappalli District, Tiruchirappalli.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records in detention order passed in Cr.M.P.No.04/2020 dated 28.01.2020 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Manikandan, S/o.Ramasamy, male, aged 26 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor



O R D E R

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

Heard Mr.K.A.S.Prabhu, learned counsel appearing for the petitioner and Mr.V.Neelakandan, learned Additional Public Prosecutor and perused the materials available on record.

2.This Habeas Corpus Petition has been filed by the father of the detenu namely Ramasamy, challenging the detention order, dated 28.01.2020 passed by the second respondent in Cr.M.P.No.4 of 2020 wherein the detenu has been branded as 'Goonda'.

3.Though several grounds have been raised to assail the detention order, Mr.K.A.S.Prabhu, 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 on the part of the detaining authority in passing the impugned order. It is submitted that the detenu was arrested on 15.11.2019, but the detention order came to be passed only with the delay of 73 days i.e., on 28.01.2020. According to the learned counsel, there is no live link between the alleged prejudicial activities of the petitioner and the order of detention. Hence, the order of detention is liable to be quashed on this ground alone.

4.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor on instruction would argue that the detention order came to be passed considering the gravity of the offence and on satisfying with the cogent and relevant materials furnished by the sponsoring authority. According to the learned Additional Public Prosecutor, there is no illegality or irregularity in the detention order warranting interference of this Court and prayed for dismissal of this Habeas Corpus Petition.

5.It is evident from the records that based on the solitary case, the second respondent chose to pass the detention order. In paragraph No.5 of the detention order, it has been mentioned that the bail petition filed by the detenu in CrI.M.P.No.370 of 2020 is pending consideration before the Principal District and Sessions Judge, Trichirappalli. However, to arrive at subjective satisfaction, the detaining authority has referred the bail granted to one Sathish @ Sathiskumar by the Principal Sessions Judge, Trichirappalli in Crime No.450 of 2014 which was registered under Sections 452 and 302 IPC. At paragraph No.4, it is stated that the detenu has committed the crime and also acting in the manner prejudicial to the maintenance of public order 'committing crimes'. When the detenu is having only one case, the detaining



authority has stated that he has committed crimes. It is also seen that in Crime No.450 of 2014, it was reported that the investigation was completed. Therefore, we are of the opinion that the similar case relied on by the detaining authority is not similar to the case of the detenu and it is a case of non application of mind.

6.It is also seen that the detenu was arrested on 15.11.2019 and the order was passed on 28.01.2020 after a lapse of 73 days. It is the submission of the learned Additional Public Prosecutor that there is no time limit prescribed in the Act for passed the detention order. We are unable to agree with the contention for the reason that this Court, in a decision in **2018(2) MWN (Cr.) 207 (Malarkodi vs. Principal Secretary to Government)**, has set aside the detention order on the ground of delay by following the earlier order of this Court reported in **2005 MLJ (Cr1.) 752 (Ramesh vs. District Collector and District Magistrate, Tiruchirappalli District and another)**, wherein it is observed that such delays tend to have an affect of snapping the link between prejudicial activity and passing of preventive orders. In the matter on hand, the delay of 73 days in passing the detention order has not been explained by the respondents. Therefore, we are of the view that the Judgment referred to above will apply to the case on hand.

7.In the light of the above facts, we are of the opinion that the detention order impugned in this Habeas Corpus Petition is liable to be set aside. Accordingly, the order of detention passed by the second respondent, in Cr.M.P.No.04/2020 dated 28.01.2020, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Manikandan, S/o.Ramasamy, male, aged 26 years, who is detained in Central Prison, Tiruchirappalli, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar(AD-II)

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Sub Assistant Registrar(CS)

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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,
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,
Tiruchirappalli District, Tiruchirappalli.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 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.

H.C.P. (MD) No.114 of 2020

06.08.2020

db (CO)

TR(18.08.2020) 4P 6C