



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.127 of 2020

WEB COPY

Radhakrishnan

... Petitioner/detenu

-vs-

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

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.

3.The Superintendent of Prison,
Trichirappalli Central Prison,
Trichirappalli

... 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 Cr.M.P.No.79 of 2019, dated 28.11.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Radhakrishnan, son of Rengaraj, aged about 28 years, now detained as 'Goonda' at Trichy Central Prison before this Court and set him at liberty forthwith.

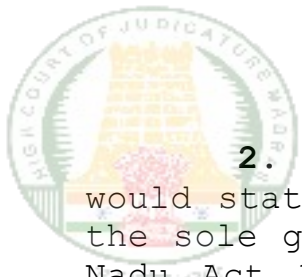
For Petitioner : Mr.R.Alagumani

For Respondents : Mr.K.Dinesh Babu
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 detenu, namely, Radhakrishnan, son of Rengaraj, aged about 28 years, challenging the detention order in Cr.M.P. No.79 of 2020, dated 28.11.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14



2. Mr.R.Alagumani, learned counsel for the Petitioner would state that the detention order is liable to be quashed on the sole ground that there is violation of Section 8 of the Tamil Nadu Act 14 of 1982. According to the petitioner the detention order came to be passed on 28.11.2019. However the Booklet along with relevant materials served on the detenu only on 8.12.2019, which is beyond a period of five days as prescribed under Section 10 of the Act. It is also contended that the representation sent on behalf of the detenu was not disposed of on time and there is an inordinate and unexplained delay which violates Articles 22 of the Constitution of India which would vitiate the impugned order of detention.

3. Mr.K.Dinesh Babu, learned Additional Public Prosecutor vehemently opposed the Habeas Corpus Petition by contending that the detenu involved in a case of theft of 470 sovereigns of gold jewels in a Nationalized Bank. The Detaining Authority after satisfying with the materials placed by the Sponsoring Authority and considering the previous antecedents of the detenu and being satisfied with the relevant and cogent materials produced by the sponsoring Authority, has passed the detention order and there is no illegality or infirmity in the detention order. It is also stated that even if there is any delay in disposal of the representation, it has not caused any prejudice to the rights of the detenu and hence, prayed for dismissal of the habeas corpus petition.

4. Heard both sides and perused the materials available on record.

5. In the instant case, the proforma 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 10.02.2020 and it was received on 17.02.2020. Remarks were called for on i.e. 18.02.2020 and it was received on 23.03.2020. The Deputy Secretary dealt with the matter on 23.03.2020. The concerned Minister dealt with the matter on 24.03.2020 and the representation came to be rejected on 26.03.2020. It is seen that in between 18.02.2020 and 23.3.2020, there was a delay of 33 days and after excluding the Government Holidays of 10 days, there was a delay of 23 days in considering the petitioner's representation.

6. At this juncture, it is useful to refer the decision of the Honourable Apex Court in the case of **Rajammal vs. State of Tamil Nadu and another**, reported in **1999 (1) SCC 417**, wherein the Apex Court has observed and held that it is for the Authority concerned to explain the delay, if any, in disposal of the



representation and if any delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

7.It is not disputed that the detenu was detained by the impugned order of detention, dated 28.11.2020 and Section 8 of the Act prescribes five days for serving of relevant materials, but the Booklet and other relevant materials have been served only on 8.12.2019, which is beyond the period of five days. So we find force in the contention of the learned counsel for the Petitioner.

8. In the case on hand, as stated supra, the delay of 23 days in considering the representation of the petitioner remains unexplained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the ground of delay by following the decision of the Honourable Apex Court referred supra and also on the ground of violation of Section 8 of the Act.

9.In fine, the Habeas Corpus Petition is allowed. The detention order in Cr.M.P.No. 79 of 2019, dated 28.11.2019, passed by the second respondent, is set aside. Consequently, the detenu, namely, Radhakrishnan, son of Rengaraj, aged about 28 years, who is now detained at 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 (CO)

// 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 Principal Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-9.
- 2.The Joint Secretary to Government,
Public(Law and Order)
Fort.St.George, Chennai-9.
- 3.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.
- 4.The Superintendent,
Trichirappalli Central Prison,
Trichirappalli
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
H.C.P. (MD) No.127 of 2020
05.11.2020

SGS (CO)
KM (23.11.2020) 4P 6C