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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.170 of 2020

Selvakumar

... 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 Magistrate and District Collector,
O/o. the District Magistrate and District Collector ,
Virudhunagar District.

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

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order of the second respondent in Cr.M.P.No.03 of 2020 (BOOTLEGGERS) dated 15.02.2020 and quash the same and direct the respondents to produce the body or person of the detenu by name Selvakumar, son of Lakshmanan, aged about 31 years, now detained as 'BOOTLEGGERS' 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.]

Challenge in the Habeas Corpus Petition is the detention order passed by the second respondent dated 15.02.2020 made in Cr.M.P.No.3 of 2020, wherein the petitioner here has been detained as 'Bootlegger'.

2.Heard Mr.R.Alagumani, learned counsel appearing for the petitioner and Mr.V.Neelakandan, learned Additional Public
<https://hcservices.ecourts.gov.in/hcservices/>



Prosecutor appearing for the respondents and perused the materials available on record.

3.Though several grounds have been raised to assail the detention order, it is now contended by the learned counsel for the petitioner that the impugned order is liable to be set aside on two grounds. Firstly, there is no proper intimation of the arrest of the detenu either to the family members or his relatives secondly, the procedural safeguards guaranteed under Article 21 and 22 of the Constitution of India have been violated. It is contended that there is an inordinate and unexplained delay in considering the representation of the petitioner.

4.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents would submit that the detention order came to be passed by the second respondent on satisfying with the cogent and relevant materials furnished by the detaining authority and also taking note of the antecedents of the petitioner. According to the learned Additional Public Prosecutor, there is no illegality or irregularity in the detention order warranting interference of this Court and the delay has caused no prejudice on the detenu and hence prayed for dismissal of this Habeas Corpus Petition.

5.In the matter on hand, a perusal of the booklet at page No.217, it is seen that the arrest of the detenu has been informed to his uncle Ramasundaram through cellphone No.8825953557, but nothing is on record to show that the cellphone belongs to him. Further, the text message is also not found in the booklet.

6.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.The proforma circulated by the learned Additional Public Prosecutor would show that aggrieved over the detention order dated 15.02.2020, a representation dated 24.02.2020 was made and it was received by the first respondent on 27.02.2020. Though remarks were called for on 28.02.2020, it was received only on 18.03.2020 and after consideration by the Under Secretary, Deputy Secretary and the Minister of Electricity and Prohibition and Exercise, it was rejected on 20.03.2020. It is seen that in between 28.02.2020 and 18.03.2020, there was a delay of 19 days and after excluding six Government Holidays, 13 days delay in considering the representation was not explained by the respondents.



8.Taking note of the above facts, we are of the considered opinion that the detention order impugned in this habeas corpus petition is liable to be quashed on the ground as stated supra.

9.In fine, the order of detention passed by the second respondent, in Cr.M.P.No.03/2020, dated 15.02.2020, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Selvakumar, S/o.Lakshmanan, aged about 31 years, 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.

Sd/-

Assistant Registrar (CS-I)

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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.

To

- 1.The Principal 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,
O/o. the District Magistrate and District Collector ,
Virudhunagar District.
- 3.The Superintendent of Prison,
Madurai Central Prison, Madurai District.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai - 600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.170 of 2020

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