



WEB COPY

H.C.P.(MD) No.246 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.246 of 2020

Subash @ Subash Chandra Bose

... Petitioner/ detenu

-vs-

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,
Office of the District Collector and District Magistrate,
Sivaganga District, Sivaganga.

3.The Superintendent of Prison,
Trichirappalli 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, connected with the detention order of the second respondent in Cr.M.P.No. 03/ Goonda/ 2020, dated 28.02.2020 and quash the same and direct the Respondents to produce the body or person of the detenu by name Subash @ Subash Chandra Bose, S/o.Pandi, aged about 20 years, now detained as 'Goonda' at Trichy Central Prison, before this Court and set him at liberty forthwith.

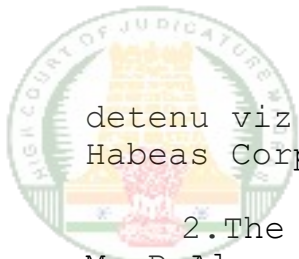
For Petitioner : Mr.R.Alagumani

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

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

Challenging the detention order passed by the second respondent, dated 28.02.2020, made in Cr.M.P.No.03/Goonda/2020, the
<https://hcservices.ecourts.gov.in/hcservices/>



detenu viz., Subash @ Subash Chandra Bose, S/o.Pandi, has filed this Habeas Corpus Petition.

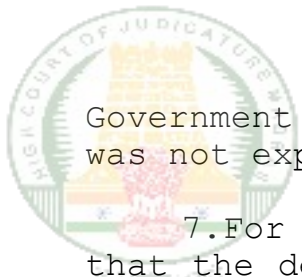
2.The learned counsel appearing for the petitioner Mr.R.Alagumani, would submit that though the detention order has been challenged by the petitioner on several grounds, he confines his argument on the ground of failure on the part of the detaining authority to inform the arrest of the detenu to his family members or his relatives and the procedural safeguards guaranteed under Article 21 and 22 of the Constitution of India is violated. It is the submission of the learned counsel for the petitioner that there is no proper intimation about the arrest of the detenu to his family members and the representation of the detenu was not considered on time.

3.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.

4.In the instant case, a perusal of the booklet at page No.70, it is seen that the arrest of the detenu has been informed to his cousin through SMS to his cellphone No.9080255101, but nothing is on record to show that the cellphone belongs to her. Further, the text message is also not found in the booklet.

5.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 be 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.

6.The proforma circulated by the learned Additional Public Prosecutor would show that aggrieved over the detention order dated 28.02.2020, the representation dated 11.03.2020 was made and it was received by the first respondent on 18.03.2020. Though remarks were called for on 19.03.2020, it was received only on 14.05.2020 and after consideration by the Under Secretary, Deputy Secretary and the Minister of Electricity and Prohibition and Exercise, it was rejected on 26.05.2020. It is seen that in between 19.03.2020 and 14.05.2020, there was a delay of 56 days and after excluding 22



Government Holidays, 34 days delay in considering the representation was not explained by the respondents.

7. For the forgoing reasons, 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.

8. In fine, the order of detention passed by the second respondent, in Cr.M.P.No. 03/ Goonda/ 2020, dated 28.02.2020, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Subash @ Subash Chandra Bose, S/o.Pandi, aged about 20 years, 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)

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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,
Office of the District Collector and District Magistrate,
Sivaganga District, Sivaganga.

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



4.The Joint Secretary to Government,
Public (Law and Order),
Fort St.George, Chennai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.246 of 2020
01.10.2020

SCR(CO)

KK(13.10.2020) 4P 6C