



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2020

CORAM:

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

H.C.P.(MD) No.258 of 2020

M.Rajesh

... Petitioner

-vs-

1. The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2. The District Collector and District Magistrate,
Tiruchirapalli District,
Tiruchirapalli.

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 records pertaining to the impugned detention order passed by the second respondent made in his proceedings in Cr.M.P.No.31/2020 dated 09.03.2020 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu namely, Dysen @ Jebastian Dayas S/o Michael, male, aged about 28 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

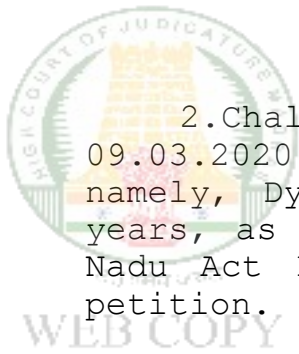
For Respondents : Mr.K.Dinesh Babu

Additional Public Prosecutor

O R D E R

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

Heard Mr.K.M.Karunakaran, learned counsel for the petitioner and Mr.K.Dinesh Babu, learned Additional Public Prosecutor for the respondents and perused the materials available on record.



2.Challenging the order of detention in Cr.M.P.No.31/2020 dated 09.03.2020 passed by the second respondent, branding the detenu, namely, Dysen @ Jebastian Dayas S/o Michael, male aged about 28 years, as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982, his brother has filed this habeas corpus petition.

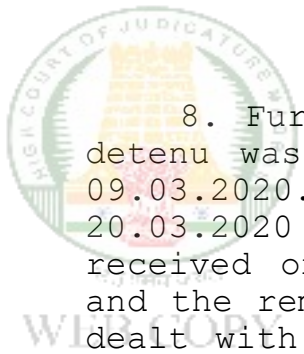
3. The learned counsel for the petitioner would submit that the detention order impugned in this habeas corpus petition is liable to be set aside on two grounds. Firstly, there was no proper intimation of arrest of the detenu in the ground case. He would further submit that no details have been furnished particularly the cell number mentioned at page 54 of the booklet, whether it belongs to the family members of the detenu or his relatives. It is also stated that the text of the SMS also not found in the booklet. In this regard, the learned counsel has placed reliance upon 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**. Secondly, there is unexplained delay in considering the representation of the petitioner, which would vitiate the detention order. In this regard, the learned counsel has placed reliance upon 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**.

4.Per contra, the learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, submitted that the Detaining Authority has arrived at the subjective satisfaction based on the materials placed by the Sponsoring Authority and there is no infirmity or irregularity in the impugned order of detention passed by the second respondent and hence, prayed for dismissal of the habeas corpus petition.

5.We have heard the rival submissions and perused the materials available on records.

6. Perusal of the arrest intimation form available at Page No.54 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell No.9324278515. 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.

7.This Court, following the decision of the Honourable Apex Court in the case of **D.K.Basu** (cited supra), 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.



8. Further, in the instant case, it is not in dispute that the detenu was detained by the order of the second respondent, dated 09.03.2020. Aggrieved over the same, a representation dated 20.03.2020 has been sent to the first respondent and the same was received on 11.05.2020 and on 14.05.2020, remarks were called for and the remarks were received on 11.06.2020. The Deputy Secretary dealt with the matter on 11.06.2020. The concerned Minister dealt with the matter on 30.06.2020 and thereafter, the detenu's representation was rejected on 02.07.2020. It is seen that there was delay of 19 days between 11.06.2020 to 30.06.2020. It is also seen that there are 6 Government holidays and after excluding the same, there is a delay of 13 days in considering the representation of the detenu.

9. In the case of **Rajammal vs. State of Tamil Nadu and another (1999 (1) SCC 417)** the Honourable Apex Court 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 nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

10. In the case on hand, there is absolutely no explanation for the delay of 13 days in considering the representation of the detenu. Hence, in our considered view, the detention order is liable to be set aside on the ground of delay also by following the decision of the Honourable Apex Court referred supra.

11. In view of that, the order of detention passed by the second respondent, in Cr.M.P.No.31/2019 dated 09.03.2020, is set aside and the habeas corpus petition is allowed. Consequently, the detenu, namely, Dysen @ Jebastian Dayas Son of Micheal, male aged about 28 years, who is 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/-

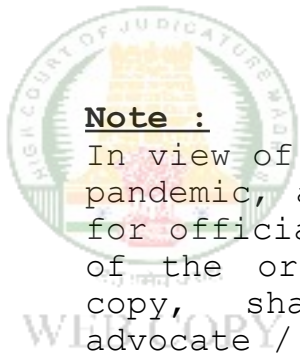
Assistant Registrar (C.O)

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/ /2020

Sub Assistant Registrar(CS)

skn



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 the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The Joint Secretary to the Government,
Public(Law and Order)Department,
Fort St.George,
Chennai - 600 009.
3. The District Collector and District Magistrate,
Tiruchirapalli District,
Tiruchirapalli.
4. The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.258 of 2020
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MA (CO)
CS (31.12.2020) 4P 6C