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H.C.P.(MD) No.260 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.11.2020
CORAM:

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

H.C.P.(MD) No.260 of 2020

Marudhai : Petitioner/Father of the detenu

-vs-

1. The District Collector and District Magistrate,
Tiruchirapalli District,
Tiruchirapalli-620 001.
2. The Additional Chief Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
3. The Superintendent,
Central Prison,
Tiruchirappalli - 620 020. ... Respondents

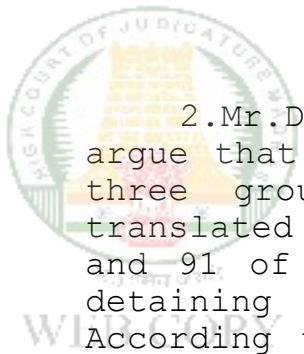
PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records pertaining to the order of detention passed by the first respondent herein and made in Cr.M.P.No.1/2020 dated 09.01.2020 and to set aside the same and directing the third respondent to produce the detenu, the petitioner's son Kandasamy, aged 47 years, S/o Marudhai now confined in Central Prison, Trichirapalli before this Court and thereby setting him at liberty.

For Petitioner	: Mr.D.Velmurugan
For Respondents	: Mr.K.Dinesh Babu
	Additional Public Prosecutor (for R1)

O R D E R

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

This habeas corpus petition has been filed challenging the detention order passed by the second respondent in Cr.M.P.No.1/2020 dated 09.01.2020, wherein, the petitioner's son, namely, Kandasamy aged about 47 years has been branded as 'Sexual Offender' as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982.



2.Mr.D.Velmurugan, learned counsel for the petitioner would argue that the impugned detention order is liable to be quashed on three grounds. Firstly, the detenu was not furnished with translated copies of page Nos.1, 26 to 63, 68, 69, 72, 79 to 83, 90 and 91 of the booklet. Secondly, similar case relied on by the detaining authority is not similar to the case of the detenu. According to the learned counsel, in similar case, the offence is registered under Sections 342, 363 IPC, 5(m), 6 of the POCSO Act, wherein, the criminal case registered against the detenu is for the offence under Section 5(1) of the POCSO Act and it also involves the offence in child marriage Act. Thirdly, there is a delay of 48 days in passing the detention order from the date of arrest of the detenu.

3.Per contra, the learned Additional Public Prosecutor would contend that the Detaining Authority has arrived at the subjective satisfaction based on the cogent and relevant materials placed by the Sponsoring Authority and there is no infirmity or irregularity in the impugned order of detention passed by the second respondent. He would further submit that the booklet furnished to the detenu contains all the translated copies of each and every documents. He would further submit that the second respondent, the detaining authority has only referred bail granted one Kamal Basha who is an accused in Crime No.5/2018 for the offences under Sections 342, 363 r/w 5 (m), 6 of POCSO Act and there is no delay for passing the detention order and hence, prayed for dismissal of the habeas corpus petition.

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

5.A perusal of the booklet furnished to the detenu would show that all the translated copies of the English documents were furnished to the detenu in the booklet. Further, admittedly, no representation has been made on behalf of the detenu seeking translated copies of the documents as sought for in the habeas corpus petition.

6.Further, perusal of the impugned order would show that while arriving at the subjective satisfaction, the second respondent has only referred the bail granted to one Kamal Basha @ Burma Kamal by the Sessions Judge, Mahila Court, Perambalur in the case of Crime No.5/2018. It is seen that the criminal case is registered against the detenu by All Women Police Station, Musiri in Crime No.16/2019 for the offences punishable under Section 363 IPC, Sections 9 and 11 of Prohibition of Child Marriage Act, 2006 and Section 5(1) and 6 of POCSO Act. In this regard, the Hon'ble Apex Court has categorically held that while arriving at subjective satisfaction, the detaining authority has to take into account all the relevant facts and the subjective satisfaction reached by the detaining authority should not be likely interfered with. With regard to the



delay, the detenu was arrested on 22.11.2019 and the detention order came to be passed on 09.01.2020, within a period of 48 days. This fact is not disputed by the petitioner.

7. In this regard, the Honourable Apex Court in the case of **Olia Mallick vs. State of West Bengal [1974 (1) SCC 594]**, has categorically held that a mere delay in making the order is not sufficient to hold that the District Magistrate must not have been satisfied about the necessity of the detention order. The relevant portion of the said decision is extracted hereunder:

"4.Mr.Mittal who appeared as amicus curiae for the petitioner, relied principally on the fact that there has been a delay of about 5 months before the order of detention was passed. He pointed out that there were in all 3 incidents of conductor wire cutting and while the first 2 occurred in October, 71 the third occurred in November, 1971. Thereafter, it is pointed out, the detention order had been passed 5 months later. It is, therefore, contended that this very delay in passing the order would show that the order was passed not because the District Magistrate was satisfied that the detention was necessary but because he felt that the petitioner deserved to be punished as the police had failed to prove the criminal cases against him. In our opinion, mere delay in making the order is not sufficient to hold that the District Magistrate must not have been satisfied about the necessity of the detention order. The activities of the petitioner were extremely dangerous. The first ground shows that the petitioner along with his associates committed theft in respect of 1200 feet of overhead aluminium conductor wire due to which electric supply from Hizli Power Station to Egra suspended for 12 hours and there was complete chaos. The second incident is similarly of theft of 3000 ft. of overhead aluminium conductor wire and this resulted in the stoppage of electric supply for 14 hours Similarly in November, he and his associates made an attempt to cut overhead aluminium conductor wire from Hizli Belda Power Supply line and on this occasion the police caught him and his associates. It appears that the police filed criminal cases but without any results. Since the activities of the petitioner marked him out as a member of a gang



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indulging systematically in the cutting of a aluminium electric wire the District Magistrate could have been very well satisfied, even after the lapse of 3 months; that it was necessary to pass the detention order to prevent him from acting in a manner prejudicial to the maintenance of the supply of electricity. We are not, therefore, inclined to interfere in this matter merely because there has been a delay of 5 months before the detention order was passed."

8. In *Yogendra Murali vs. State of U.P., and others* reported in (1988)4 SCC 559, it has been held as follows:-

"6. We also do not find any merit in the plea that the impugned order is bad on account of delay. It is true that the ground which led the District Magistrate to pass the detention order became available in July and the order was passed only in December but it is not right to assume that an order of detention has to be mechanically struck down if passed after some delay. (See K. Aruna Kumari v. Government of Andhra Pradesh & Ors.. [1988] 1 SCC 296 and the cases mentioned there."

9. In the light of the decisions referred above, we find no merits in the contention of the learned counsel for the petitioner.

10. For the foregoing reasons, the habeas corpus petition is liable to be dismissed and accordingly, it is dismissed.

Sd/-

Assistant Registrar (AD-I)

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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 District Collector and District Magistrate,
Tiruchirapalli District,
Tiruchirapalli.
2. The Additional Chief Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
3. The Superintendent,
Central Prison,
Tiruchirappalli - 620 020.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Hon'ble POCSO Committee,
High Court, Madras.

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MA (CO)
CS (20.01.2021) 5P 6C