



WEB COPY

H.C.P.(MD) No.262 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2020

CORAM:

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

H.C.P. (MD) No.262 of 2020

Maheswari

... Petitioner

-VS-

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

2.The District Magistrate and District Collector,.
O/o the District Collector,
Tiruchirappalli.

3.The Superintendent of Prison,
O/o the Superintendent of Prison,
Central Prison,
Tiruchirappalli.

4.The Inspector of Police,
O/o the Inspector of Police,
Manachanallur Police Station,
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 in Cr.M.P.No.35/2020 dated 14.03.2020 on the file of the respondent No.2 and quash the same and direct the respondents to produce the body and person of the petitioner's husband namely, Ariyanathan, S/o Thangavel aged 52 years now confined at Central Prison, Tiruchirappalli before this Court and set him at liberty forthwith.

For Petitioner : Mr.SMA.Jinnah

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor



O R D E R

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

Heard Mr.SMA.Jinnah, learned counsel for the petitioner and Mr.V.Neelakandan, 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.35/2020 dated 14.03.2019 passed by the second respondent, branding the detenu, namely, Ariyanathan, S/o Thangavel aged 52 years, as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982, his wife has filed this habeas corpus petition.

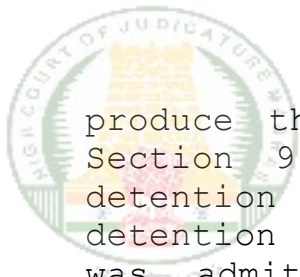
3.It is the contention of the learned counsel for the petitioner that the detenu was not produced before the advisory board constituted under Section 9 of the Tamil Nadu Act 14 of 1982, within a period of three months, as mandated under Section 10 of the Tamil Nadu Act 14 of 1982. Therefore, the order impugned in this habeas corpus petition is liable to be set aside.

4.Per contra, the learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, would contend that the detenu could not be produced before the advisory board as per Section 10 of the Act in view of the Covid 19 pandemic, however, he was produced by the detaining authority on 27.04.2020. According to the learned Additional Public Prosecutor, the detention order has been passed on being satisfied with the reasons and cogent 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.Section 10 of the Tamil Nadu Act 14 of 1982 reads follows:-

"10.Reference to Advisory Board - In every case where a detention order has been made under this Act, the State Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by them under Section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under sub-section (3) of section 3."

6.A plain reading of the above section would make it clear that it is imperative on the part of the detaining authority to



produce the detenu before the Advisory Board constituted under Section 9 of the Act, within three weeks from the date of detention of a person under the Act. In the instant case, the detention order came to be passed on 14.03.2020, but the detenu was admittedly produced before the Advisory Board only on 27.04.2020. It would indicate that the mandate of Section 10 has been violated.

7.That apart, the *pro forma* circulated by the learned Additional Public Prosecutor would show that aggrieved over the detention order dated 14.03.2019, a representation dated 20.03.2020 was given and it was received by the first respondent on 20.04.2020. Remarks were called for on 24.04.2020 and it was received on 19.05.2020. In between 24.04.2020 and 19.05.2020, there was delay of 25 days and after excluding 9 Government holidays, the delay of 16 days was not properly explained by the respondents either in the counter affidavit or during the arguments.

8.For the forgoing reasons, the order of detention passed by the second respondent, in Cr.M.P.No.35/2020 dated 14.03.2020, is set aside and the habeas corpus petition is allowed. Consequently, the detenu, namely, Ariyanathan, S/o Thangavel aged 52 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(CO)

// True Copy //

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

H.C.P. (MD) No.262 of 2020
04.08.2020

SCR(CO)
TR(21.09.2020) 4P 6C