



WEB COPY

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.480 of 2020

Dowlath Begam

... Petitioner/Mother of the detenu

-vs-

1.State of Tamil Nadu, rep. By

The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George, Chennai-9.

2.The District Magistrate And District Collector,

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

3.The Superintendent, 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 in the detention order passed in P.D.O.No.40/2020, dated 24.3.2020, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Thamim Ansari, S/o.Mohamed Salim, male, aged 20 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.G.Arun Kumar

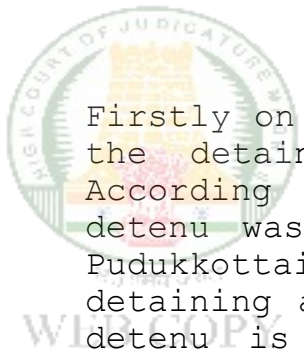
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

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

The mother of the detenu namely Thamim Ansari, S/o.Mohamed Salim, who has been detained by the order of the second respondent dated 24.03.2020 in P.D.O.No.40 of 2020, wherein he has been branded as 'Goonda', has filed this Habeas Corpus Petition.

2.Mr.K.G.Arun Kumar, learned counsel appearing 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 on the ground of lack of application of mind on the part of the detaining authority to reach the subjective satisfaction. According to the learned counsel, the bail petition filed by the detenu was admittedly dismissed by the Principal Sessions Judge, Pudukkottai, without any materials available on record. The detaining authority has observed that there is a likelihood of the detenu is coming out on bail. It is next contended that the representation of the petitioner was not disposed of in time and there is an unexplained and inordinate delay, which would vitiate the order of detention.

3.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor on instructions would argue that the detention order was rightly passed by the second respondent based on the relevant and cogent materials produced by the sponsoring authority and there is no illegality or irregularity in the order of detention. It is further submitted that there is reasonable delay in disposing of the representation of the petitioner and even that would not cause any prejudice to the detenu.

4.In the matter on hand, a perusal of the detention order would show that the bail petition filed by the detenu in Cr.M.P.No.1087 of 2020 came to be dismissed on 13.03.2020 by the Principal Sessions Judge, Pudukkottai in the ground case. It is further seen that while arriving at the subjective satisfaction, the detaining authority has not relied on or referred to a similar case details to come to a conclusion that the detenu is likely to be released on bail, which shows lack of application of mind on the part of the detaining authority. However, to arrive at a subjective satisfaction, the detaining authority has not even referred about the likelihood of the detenu to be released on bail in the ground case and no similar case particulars have been referred to or relied on by the detaining authority in this regard. So, we are of the view that the subjective satisfaction has been reached by the detaining authority is without any material. Hence, the order of detention is liable to be set aside.

5.The proforma circulated by the learned Additional Public Prosecutor would show that aggrieved over the detention order dated 24.03.2020, the representation dated 06.05.2020 was made and it was received by the first respondent on 18.05.2020. Though remarks were called for on 18.05.2020, it was received only on 22.05.2020 and the Deputy Secretary dealt with the matter on 23.05.2020 and it was dealt with by the Minister of Electricity and Prohibition and Excise Department on 01.06.2020 and thereafter, it was rejected on 01.06.2020. It is seen that in between 23.05.2020 and 01.06.2020, there was delay of 08 days and after excluding 04 Government Holidays, 4 days in considering the representation was not explained by the respondents.

<https://hcservices.courts.gov.in/hcservices/> 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 grounds as stated supra.

7.In fine, the order of detention passed by the second respondent, in P.D.O.No.40/2020 dated 24.3.2020, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Thamim Ansari, S/o.Mohamed Salim, aged 20 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 (CS-I)

// 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 Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George, Chennai-9.
- 2.The District Magistrate And District Collector,
O/o. the District Magistrate and District Collector,
Pudukkottai District, Pudukkottai.
- 3.The Superintendent, Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public(law & order), Fort St.George, Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.480 of 2020

01.10.2020

SRK(CO)

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