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H.C.P.(MD) No.499 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.499 of 2020

Vijaya

... Petitioner

-vs-

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The Chairman,
Advisory Board,
32, Rajaji Salai,
Singaravelan Maligai, Ground Floor (Backside Entrance),
Chennai Collectorate,
Chennai - 600 001.
- 3.The District Collector and District Magistrate,
Sivagangai District,
Sivagangai.
- 4.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.
- 5.The Superintendent of Central Prison,
Madurai Central Prison,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus directing the respondents herein to produce the detainee namely, Akash, aged about 25 years, son of Chithiraisamy, who has been termed as "Goonda" and who is now detained in the 5th respondent's prison and to call for the entire records relating to the detention order in Cr.M.P.No.04/Goonda/2020 dated 11.03.2020 passed by the 3rd respondent herein and to set aside the same and to set the detainee at liberty.

For Petitioner : Mr.M.S.Jeyakarthik
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor



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 third respondent dated 11.03.2020 in Cr.M.P.No.04/Goonda/2020, wherein the detenu, the son of the petitioner has been detained under Section 2(f) of the Tamil Nadu Act 14 of 1982 branding him as "Goonda".

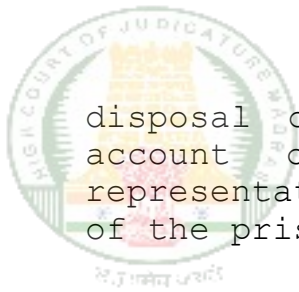
2.Mr.S.Jeyakarthik, learned counsel for the petitioner would argue that the impugned detention order is liable to be set aside on three grounds. Firstly, there is a delay in disposal of the representation, secondly, on the ground of non furnishing of the translated copies of the relevant documents annexed in the booklet from the page Nos.92 to 97 and thirdly, it is contended that the similar case relied on by the detaining authority to arrive at subjective satisfaction, is not similar to the case of the detenu.

3.Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents would argue that the detaining authority, namely, the third respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the order of detention passed by the second respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

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

5.In the instant case, it is not in dispute that the detenu was detained by the order of the second respondent dated 11.03.2020. Aggrieved over the same, a representation dated 24.07.2020 has been sent to the first respondent and the same was received on 29.07.2020 and on the same day, remarks were called for, but, the same were received only on 05.08.2020. The Deputy Secretary dealt with the matter on 05.08.2020. The concerned Minister dealt with the matter on 08.08.2020 and thereafter, the detenu's representation was rejected on 10.08.2020. It is seen that there was delay of 7 days between 29.07.2020 and 05.08.2020. It is also seen that there are 2 Government holidays and after excluding the same, there is a delay of 5 days in considering the representation of the detenu.

6.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.

7. In the case on hand, there is absolutely no explanation for the delay of 5 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 by following the decision of the Honourable Apex Court referred supra.

8. Further, a perusal of the booklet from page Nos.92 to 97 would show that they are remand extension orders and also bail dismissal order in Cr.M.P.No.370 of 2020 and all the documents are English and the translated copies of the documents are not found place in the booklet. So, we are satisfied that the valuable rights of the detenu has been deprived for non-furnishing of the documents.

9. Further, it is to be noted that the bail petition of the detenu in the ground case in Crime No.11 of 2020 was rejected by the Principal Sessions Judge, Sivagangai in Cr.M.P.No.370 of 2020 on 24.02.2020 on the ground that the detenu is having two adverse cases in Crime Nos.589/2017 and 983/2017, but in the similar case relied on by the detaining authority, bail was granted to Vengai @ Vengeswaran by the Sessions Judge, Sivagangai in Cr.M.P.No.1942/2015 for the offences under Sections 392, 397, 506(ii) IPC on the ground that he did not have any previous case. Therefore, as rightly contended by the learned counsel for the petitioner, the similar case relied on by the detaining authority to reach the subjective satisfaction, is not similar to the case of the detenu. Hence, we are of the view that the impugned detention order is liable to be quashed for the reasons stated above.

10. In fine, the order of detention passed by the third respondent, in Cr.M.P.No.04/Goonda/2020, dated 11.03.2020, is set aside and the habeas corpus petition is allowed. Consequently, the detenu, namely, Akash, aged about 25 years, son of Chithiraisamy, who is detained at Central Prison, Madurai is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

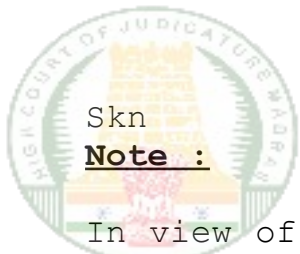
Sd/-

Assistant Registrar (Cr1.Side)

// 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 Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The Chairman,
Advisory Board,
32, Rajaji Salai,
Singaravelan Maligai, Ground Floor (Backside Entrance),
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- 3.The District Collector and District Magistrate,
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Sivagangai.
- 4.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.
- 5.The Superintendent of Central Prison,
Madurai Central Prison,
Madurai.
- 6.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort Saint George, Chennai-9.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.S.JEYAKARTHICK, Advocate (SR-20506[F] dated 19/10/2020)

H.C.P. (MD) No.499 of 2020

16.10.2020

SSS (CO)

NR (19/11/2020) 4P : 9C

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