



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD) No. 496 of 2019

Murugan : Petitioner

Vs

1.The Principal Secretary to the Government
Home, Prohibition & Excise Department,
Secretariat,
Chennai-09.

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

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

: Respondents

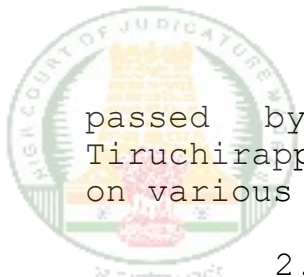
Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records pertaining to the impugned detention order passed by the second respondent made in his proceedings in Cr.MP.No.22 of 2019 dated 05.06.2019 in detaining the detenu under 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 Gopal, S/o.Murugan, Male aged about 35 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
	Addl.Public Prosecutor

ORDER

[Order of the Court was made by **T.RAJA, J.**]

Mr.Murugan, father of the detenu Gopal, aged about 35 years, who is detained in Central Prison, Tiruchirappalli, has moved this Court by way of filing this Habeas Corpus Petition, challenging the correctness of the impugned detention order dated 05.06.2019



passed by the District Collector and District Magistrate, Tiruchirappalli District/second respondent herein to quash the same on various grounds.

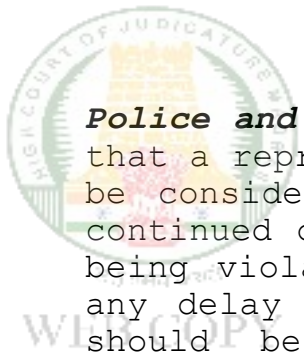
2.Firstly, learned counsel appearing for the petitioner would point out before us about the inconsistent stand taken by the respondents in the counter affidavit as well as in the proforma affidavit. Adding further, he would submit that the petitioner gave a detailed representation dated 11.06.2019 to the first respondent through the 3rd and 2nd respondents by registered post and postal seal affixed on the first page of the representation. Hence, it would clearly show that the representation has been sent to the first respondent on 11.06.2019. Even the track consignment copy produced before us, shows that the said representation has been sent to the first respondent through registered post. Receipt of the representation has been accepted by the Office of the second respondent. The relevant portion of the admission made by the second respondent in the counter affidavit accepting the representation dated 11.06.2019 is extracted as under:

"8.It is respectfully submitted that the averments raised by the petitioner herein in grounds paragraph 'c' is denied as false as the representation dated 11.06.2019 was promptly considered and reply was provided expeditiously thereby adhered to the provision as enunciated in Article 22(5) and the same was placed before the advisory board as contemplated under Section 10 of Tamil Nadu Act 14 of 1982."

Whereas in the proforma affidavit produced before us by the learned Additional Public Prosecutor shows that there was no representation received from the petitioner. When the counter affidavit admits the receipt of the representation, further, it is fortified by the postal seal and also a copy of the track consignment issued by the High Court Post Office at Madurai Bench, we are unable to countenance the stand taken by the respondent in the proforma affidavit that there is no representation given by the petitioner.

3.Secondly, the learned counsel would also submit that paragraph No.8 of the counter affidavit, while admitting the receipt of the representation, in the counter affidavit, nowhere, it is spoken how this has been considered and on what date, it was rejected. It clearly shows that the representation of the petitioner, given on 11.06.2019 through registered post, has not been considered and that is a clear and blatant violation of Article 22(5) of the Constitution of India.

4.Heard the learned counsel appearing for the parties and perused the materials available on record.



Police and Others, (1989) 3 SCC 173, the Supreme Court has observed that a representation of a detenu, whose liberty is in peril, should be considered and disposed of, as expeditiously as possible. The continued detention will render itself impermissible and invalid as being violative of Article 22(5) of the Constitution of India. If any delay occurs in the disposal of a representation, such delay should be explained, by the appropriate authority, to the satisfaction of the Court.

6. In fact, this Court, in its order, dated 9.11.2011, in ***Smt. Sowdun Bivi Vs. The State of Tamilnadu (H.C.P.No.108 of 2011)***, has clarified the position relating to the issue regarding the consideration of the representation made on behalf of the detenu, referring to the Full Bench decision of this Court, in ***Rajammal Vs. State of Tamil Nadu and another (1999 AIR SCW 139)***. Thus, it is clear, from the catena of cases decided by the Supreme Court, that there is an obligation cast on the Detaining Authority, as well as the State Government, to consider the representation made on behalf of the detenu, as early as possible, as per the mandate enshrined in Clause (5) of Article 22 of the Constitution of India.

7. From the decisions cited above, it is clear that the Honourable Apex Court as well as our High Court, while dealing with similar issues, have clearly held that if the representation given by the detenu or his family members was not considered diligently, that undue delay violates the liberty guaranteed under Article 22(5) of the Constitution of India. Therefore, on the sole ground that the representation dated 11.06.2019 sent by the petitioner has not been considered by the respondent, the impugned order is liable to be quashed.

8. Accordingly, this petition stands allowed. Consequently, the impugned detention order passed by the second respondent in Cr.M.P.No.22/2019 dated 05.06.2019 is set aside and the detenu Gopal, S/o.Murugan, Male aged about 35 years, who is detained in Central Prison, Tiruchirappalli is set at liberty. The Superintendent of Central Prison, Tiruchirappalli/third respondent is directed to release him forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



vs

To

1.The Principal Secretary to the Government
Home, Prohibition & Excise Department,
Secretariat,
Chennai-09.

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

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

4.The Joint Secretary to Government,
Public(Law and Order)
Fort St.George, Chennai-9.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.496 of 2019
08.01.2020

KK/SAR/04.02.2020/4P-6C/