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H.C.P(MD) No.531 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **03.01.2020**

CORAM:

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

and

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

H.C.P. (MD) No.531 of 2019

Jegabarkani

... Petitioner

versus

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 Collector and
District Magistrate,
O/o. The District Collector and
District Magistrate,
Nagapattinam District.
Nagapattinam.

3. The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Habeas Corpus, to call for the entire records in detention order passed in C.O.C.No.26/2019 dated 10.06.2019 on the file of the 2nd 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, Settu @ Idayathullah, S/o. Kamaludeen, male, aged 41 years, who is detained in Central Prison, Tiruchirappalli.

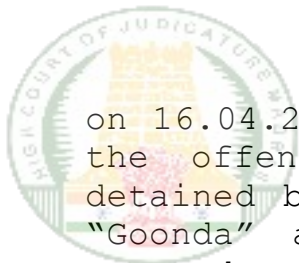
For Petitioner : M/s. K.A.S.Prabhu
For Respondents : Mr.K.Dinesh Babu,
Additional Public Prosecutor

ORDER

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

Mrs.Jegabarkani, mother of the detenu, has come to this Court, questioning the correctness of the impugned detention order dated 10.06.2019 on ground that when her son detenu was arrested

<https://hccs.courts.gov.in/hccs/portal>



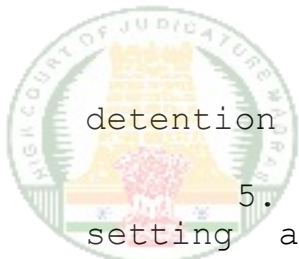
on 16.04.2019 in connection with the case in Cr.No.87 of 2019 for the offence under Section 302 of IPC, he was unnecessarily detained by the impugned order dated 10.06.2019, branding him as "Goonda" and there is no justification, warranting the second respondent to pass the impugned detention order.

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2. The learned counsel appearing for the petitioner submitted that there is only one solitary ground case, registered in Crime No. 87 of 2019 for the offence under Section 174 Cr.P.C., that has been subsequently altered to one for the offence under Section 302 IPC. The petitioner has given a representation dated 17.06.2019 to the detaining authority and on the very same date, yet another representation was also addressed to the Government/first respondent herein. Inviting our attention to the registered representation, sent to the first respondent, which was enclosed at page no.17 of the typed set of papers, the learned counsel submitted that the representation addressed to the Government on 17.06.2019 has not evoked any response that would violate the mandatory principles adumbrated in Article 22(5) of the Constitution of India. Adding further, the learned counsel submitted that when there is no whisper about the disposal of the representation by the first respondent, it would certainly go to show that the detenu is kept in illegal custody. Therefore, the impugned order is liable to be quashed.

3. Opposing the above prayer, the learned Additional Public Prosecutor appearing for the respondents producing a proforma pleaded that though the petitioner has pleaded that she sent two representations, dated 17.06.2019, one to the detaining authority and another one to the first respondent/Government, it was found that there was only one representation sent to the detaining authority on 17.06.2019 and that was considered and finding no merits, that was rejected on 28.06.2019. Since the representation said to have been sent to the first respondent is not found anywhere in the office of the respondent, the contention made by the petitioner that she sent yet another representation to the first respondent cannot be true.

4. We are not able to countenance such arguments. Page No.17 of the typed set of papers clearly shows that the petitioner has sent a representation on 17.06.2019 to the first respondent and in that representation also, there has been a receipt attached with the postal seal and date. Therefore, the copy of the proforma produced before us clearly shows that the respondent office has not found the representation sent by the petitioner to the first respondent; secondly the first representation given to the detaining authority was also rejected on 28.06.2019. In view of the fact that there is no whisper about the second representation addressed to the first respondent, the impugned



detention order is liable to be set aside.

5. In the result, the Habeas Corpus Petition is allowed by setting aside the order of detention passed by the second respondent herein, namely, the District Collector and District Magistrate, Nagapattinam District, in C.O.C.No.26 of 2019 dated 10.06.2019. Consequently, the detenu, namely, Settu @ Idayathullah, S/o.Kamaludeen, aged about 41 years, who is now 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/proceedings.

Sd/-

Assistant Registrar (CS-I)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.
2. The District Collector and
District Magistrate,
O/o. The District Collector and
District Magistrate,
Nagapattinam District, Nagapattinam.
3. The Superintendent, 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.531 of 2019

03.01.2020

KM/ (24.02.2020) 3P 6C