



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

H.C.P. (MD)No.539 of 2019

Rajakumar @ Rajkumar

: Petitioner

Vs.

1.State of Tamilnadu

rep. by the Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai.

2.The District Collector and District Magistrate
Kanyakumari District,
Nagercoil.

3.The Superintendent of Prison
Central Prison,
Palayamkottai,
Tirunelveli.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the entire records connected with the detention order passed in P.D.No.18/2019 dated 12.06.2019 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, Rajakumar @ Rajkumar, aged about 26 years, S/o.Amose, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.K.Dinesh Babu

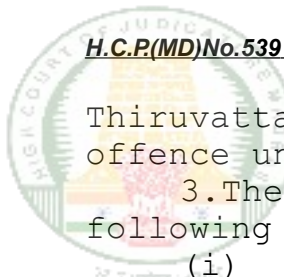
Additional Public Prosecutor

ORDER

(Order of the Court was made by T.RAJA, J.)

Challenging the correctness of the order of detention passed by the second respondent vide proceedings in P.D.No.18/2019 dated 12.06.2019, whereby, the detenu was ordered to be detained under the provisions of the Tamil Nadu Act 14 of 1982, branding him as a "Goonda", the petitioner/detenu, namely, Rajakumar @ Rajkumar, is before this Court with this Habeas Corpus Petition.

2.As per the grounds of detention, dated 12.06.2019, the detenu came under adverse notice in five adverse cases and in the ground case, which was registered in Crime No.175/2019 on the file of the



Thiruvattar Police Station, who is the sponsoring authority, for offence under Sections 120(B), 294(b), 323, 307 and 506(ii) IPC.

3. The learned counsel assailed the impugned order on the following two grounds, namely,

(i) on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered properly and seriously and there was an inordinate and unexplained delay. The learned counsel has also relied on few Judgments of the Hon'ble Supreme Court; and

(ii) The second contention is that the arrest memo dated 19.05.2019 was issued. However, with regard to the arrest of the detenu in the ground case was neither communicated to the petitioner nor any proof of any acknowledgment either by the detenu or by the family members of the detenu has been taken. Based on these ground, the learned counsel would plead for setting aside the detention order.

4. Learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. In this case, the Detention Order was passed on 12.06.2019. As against the same, the petitioner made a representation on 18.06.2019. The remarks were called for by the Government from the Detaining Authority and the remarks were received on 19.08.2019. Thereafter, the Government considered the issue and passed the order rejecting the representation on 23.09.2019. There are totally 29 days delay in considering the representation. It is the contention of the petitioner that excluding 11 days towards public holidays, there was delay of 18 days in considering the representation.

6. Now, the question is as to whether on that score, the impugned order can be quashed.

7. In **Rekha Vs. State of Tamil Nadu**, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu.

8. In **Sumaiya Vs. The Secretary to Government**, [2007 (2) MWN

(Cr.) 145], a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu/detenu would be sufficient to set aside the detention order. In **Tara Chand Vs. State of Rajasthan and others**, [1980 (2) SCC 321], the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

9. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 18 working days, which would vitiate the order of detention. Similarly, on the ground of the non communication of arrest information of the detenu in the ground case to the family members of the detenu, the impugned detention order is liable to be quashed. Resultantly, the impugned order is quashed. Consequently, this Habeas Corpus Petition is allowed. The detenu, namely, Rajakumar @ Rajkumar, S/o.Amose, aged about 26 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RR

To

- 1.The Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai.
- 2.The District Collector and District Magistrate
Kanyakumari District,Nagercoil.
- 3.The Superintendent of Prison
Central Prison,Palayamkottai,Tirunelveli.
- The Joint Secretary
Public (Law & Order) Department,
Fort.St.George, Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Order made in
H.C.P. (MD)No.539 of 2019
Dated: 29.01.2020

SMA/16/03/2020/3P/6C