



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **02.01.2020**
CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD)No.601 of 2019

Muthuselvam @ Avva Muthuselvam

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai District.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the 2nd respondent in Detention Order No.36/BCDFGISSSV/2019, dated 29.06.2019, quash the same and direct the respondents to produce the body or person of the detenu, by name Muthuselvam @ Avva Muthuselvam, son of Karuppasamy, aged about 24 years, (now confined at Central Prison, Madurai) before this Court and set him at liberty forthwith.

For Petitioner	: Mr.R.Alagumani
For Respondents	: Mr.K.Dinesh Babu
	Additional Public Prosecutor

ORDER

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

Muthuselvam @ Avva Muthuselvam, son of Karuppasamy, aged about 24 years, has come to this Court, assailing the correctness of the impugned order of detention dated 29.06.2019, passed by the second respondent/Commissioner of Police, Madurai District, detaining him at the Central Prison, Madurai.



2.Learned counsel appearing for the petitioner submitted that after remand in the ground case, a bail application in Cr.M.P.No.2532 of 2019 has been moved on behalf of the detenu and the same is pending before the Principal District and Sessions Court, Madurai. The learned counsel further pleaded that the detaining authority taking note of the fact that bail was granted by the learned Principal Sessions Judge, Madurai, in Cr.M.P.No.2021 of 2019 on 11.06.2019 to Abisheksingh @ Abi, co-accused of the detenu in the ground case, clamped the order of detention on the ground that there is a real possibility of the detenu coming out on bail through the pending bail application in the ground case and detained him under the impugned detention order. However, on 02.07.2019, the petitioner/detenu has sent a representation to the respondents 1 and 2 as well as to the Advisory Board through the Superintendent of Central Prison, Madurai, third respondent herein, requesting to supply all the documents referred to in the impugned detention order. But, till date, his request has not been considered, besides, they have not even revoked the detention order.

3.It is further pleaded by the learned counsel appearing for the petitioner that when the detenu is legally entitled to make his representation seeking revocation of detention order on certain acceptable justification, if the representation carrying reasonable and justifiable explanation, has not been considered by the Government due to non-forwarding of the same to the Government either by the second respondent or by the third respondent, it is well settled legal position that the detention order stands vitiated. In the present case, the detailed representation dated 02.07.2019, has been sent to the respondents 1 and 2 as well as to the Advisory Board through the third respondent. However, the respondents have not considered the said representation, therefore, the detention order is liable to be quashed by this Court by allowing this Petition.

4.A detailed counter affidavit has been filed by the second respondent/Commissioner of Police, Madurai District. The learned Additional Public Prosecutor appearing for the respondents drawing our attention to Page No.7 of the counter affidavit filed by the second respondent submitted that it is true that the petitioner has given a representation on 02.07.2019 and the same was also received from him on 04.07.2019. Immediately, on the very same date, remarks were called for from the sponsoring authority and on the next date, viz., on 05.07.2019, remarks were received from the sponsoring authority. Again, on the very same date, reply was given to the detenu and the copy of the reply was also sent to the Government on 05.07.2019. In this context, it is relevant to extract below the relevant portion of the explanation offered by the respondents.

''The detenu was produced before the advisory board on 02.07.2019. Further, the representation dated 02.07.2019



submitted by the petitioner to the Advisory Board through Respondent No.3 was received in this office and considered as detailed below:-

Representation received from the detenu through Superintendent, Central Prison, Madurai	: 04.07.2019
Remarks called for from Sponsoring Authority	: 04.07.2019
Remarks received from Sponsoring Authority	: 05.07.2019
Reply sent to the detenu	: 05.07.2019
Copy of reply sent to the Government	: 05.07.2019

Hence, the contention of the petitioner is not sustainable on merits.'

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

6.At this juncture, it is relevant to refer to the decision of a Division Bench of this Court dated **24.07.2019**, made in **H.C.P. (MD) No.108 of 2019**, wherein the Division Bench of this Court following the ratio laid down in **Agalya Bhai vs. State of Tamil Nadu** reported in **1997 (III) CTC 486 (DB)**, has observed that the failure of Jail Superintendent to forward the detenu's representation to the Central Government amounts to deprivation of the right of the detenu to have his detention revoked and again finding fault with the authorities for not forwarding the representation submitted by the detenu through the Superintendent of Prison to the first respondent/Government as well as to the Chairman, Advisory Board, has held that it would definitely vitiate the order of detention. Since one of us [B.Pugalendhi, J.] being a party to the above Division Bench, we also follow the same order in the present case as well.

7.As we highlighted above, the representation dated 02.07.2019, submitted by detenu was received by the Superintendent, Central Prison, Madurai, on 04.07.2019 and remarks were called for from the Sponsoring Authority on the same day and accordingly, remarks were received on 05.07.2019 and thereafter, reply was sent to the detenu on 05.07.2019 and copy of the reply was sent to the Government on 05.07.2019, but till date, no final order has been passed and the counter affidavit also does not whisper about the disposal of the representation. Therefore, for inordinate and unexplained delay on the part of the Government in not considering the representation renders the detention order illegal. On this sole ground, the impugned detention order is liable to be quashed.

8.Resultantly, this petition stands allowed and the impugned detention order stands quashed. Consequently, the detenu, namely, Muthuselvam @ Avva Muthuselvam, aged about 24 years, who is now detained at Madurai Central Prison, 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-III)

WEB COPY

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

smn2

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai District.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Joint Secretary to Govt.,
Public(LAW&ORder) Department,
Secretariat, Chennai 9

H.C.P. (MD) No. 601 of 2019
02.01.2020

MK (03.03.2020) 4P 6C