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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**

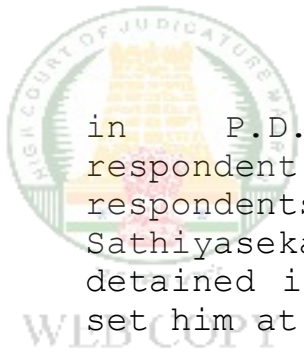
H.C.P. (MD)Nos.616 and 618 of 2019

Suresh @ Balasubramanian : Petitioner in H.C.P.No.616/2019
Sekar @ Sathiyasekaran : Petitioner in H.C.P.No.618/2019
Vs

- 1.State rep. by the
The Principal Secretary to Government
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-09.
- 2.The District Magistrate & District Collector,
O/o.The District Magistrate and District Collector,
Pudukkottai District
Pudukkottai.
- 3.The Superintendent
Central Prison,
Tiruchirappalli. : Respondents in both H.CPs

Prayer in in H.C.P.No.616/2019: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records in detention order passed in P.D.O.No.12/2019 dated 08.06.2019 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Suresh @ Balasubramanian, S/o.Ramalingam, male aged 35 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

Prayer in in H.C.P.No.618/2019: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records in detention order passed



in P.D.O.No.13/2019 dated 08.06.2019 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Sekar @ Sathiyasekaran, S/o.Gnanasekaran, male aged 37 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu
For Respondents : Mr.K.Dinesh Babu
Addl.Public Prosecutor

C O M M O N O R D E R

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

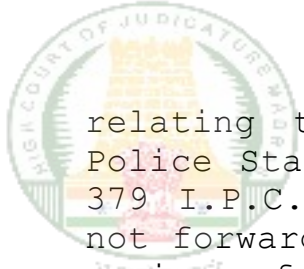
Suresh @ Balasubramanian has brought HCP(MD).No.616/2019 assailing the validity of the impugned detention order dated 08.06.2019 passed by the second respondent/District Collector and District Magistrate, Pudukkottai District in P.D.O.No.12/2019, branding the petitioner as 'Goonda'.

Sekar @ Sathiyasekaran has brought HCP(MD).No.618/2019 assailing the validity of the impugned detention order dated 08.06.2019 passed by the second respondent/District Collector and District Magistrate, Pudukkottai District in P.D.O.No.13/2019, branding the petitioner as 'Goonda'.

2.Mr.R.Rajaraman, learned counsel appearing for the petitioners, assailed the impugned detention orders on the sole ground that the detenus were facing 2 cases one adverse case in Cr.No.153/2017 on the file of the Avudayarkovil Police Station for the offence under Section 174 Cr.P.C @ 302 and 379 I.P.C and yet another ground case in Cr.No.187/2019 on the file of Aranthangi Police Station, Pudukkottai for an offence under Sections 302 and 379 I.P.C. The impugned orders of detention have been passed making reference only to the order of remand in both cases namely adverse case and ground cases, but copies of the orders of remand and copies of orders of extension of remand were not furnished to the detenus, in spite of a written request made by the detenus in their representations dated 01.07.2019.

3.Learned counsel appearing for the petitioners reading out the unnumbered 3rd paragraph in page 3 of the representations dated 01.07.2019, argued that the petitioners, after coming to know the impugned detention orders have been passed, after they were remanded in both adverse case and ground case, asked for copies of the order of remand and also copies of order of extension of remand. It has been shown that the petitioners were remanded on 25.04.2019 in ground case. Further, it has been shown

<https://hdservices.ecoforts.gov.in/hdservices/>



relating to Cr.No.153/2017 on the file of the Avudayarkovil Police Station for an offence under Section 174 Cr.P.C @ 302 and 379 I.P.C. The second respondent for the reason best known has not forwarded the said representations and also not furnished the copies of the orders of remand and also copies of order of extension of remand. Hence, according to him, non-furnishing of the orders of remand or the orders of extension of remand to the detenus is a clear violation and the same also vitiates the orders of detention.

4.The learned counsel, strongly relying on the judgment of the Full Bench of this Court in **(2007) 2 MLJ (Crl) 1841**, in the case of **G.Kalaiselvi Vs State of Tamil Nadu, rep. by Secretary to Government of Tamil Nadu, Home and Prohibition and Excise Department, Chennai-09**, invited our notice to paragraph No.27 of the said judgment, which holds that if a request has been made for furnishing a copy of the remand order and the same has not been complied with, moreover, no apparent reason is given, it clearly shows that the order of remand has been completely vitiated. Furthermore, as settled by this Court in **Pawnammal Vs. State of Tamil Nadu and another**, reported in **(1999) SCC (Crl.) 231**, it is the duty of the appropriate authority to furnish such copy or at least indicate the reason why such copy is not supplied to the detenu inspite of specific request by the detenu. As already indicated, where a document asked for is on the face of it irrelevant, non-furnishing of such document is immaterial. Where, however, the document has got some relevance, refusal to supply such copy, in spite of specific request, without any valid reason, may have the effect of vitiating the order of detention as the detenu is likely to be prejudiced, inasmuch as he would not be in a position to make an effective representation.

5.As though counter affidavits have been filed by the second respondent supporting the impugned orders, after the impugned orders of detentions were passed by the second respondent, when the specific representations dated 01.07.2019 have been given to the first respondent/Government herein specifically asking him to furnish copy of the remand order and also a copy of extension of remand, the respondent, till date, has not come forward to furnish either the copy of the remand orders or the copy of the extension of remand orders. It is therefore necessary to extract the relevant portion of the Full Bench decision above cited and the same reads as follows:-

"21.Law is well settled that the detaining authority is required to give copies of the relied upon documents along with grounds of detention and non-furnishing of relied upon document has the effect of vitiating the order of detention. See



Pawnammal Vs. State of Tamil Nadu and another, reported in (1999) SCC (Cr1.) 231. Where, however, a document is not relied upon, yet the detenu asks for copy of such document, which is either referred to or has got some bearing, it is the duty of the appropriate authority to furnish such copy or atleast indicate the reason why such copy is not supplied to the detenu inspite of specific request by the detenu. As already indicated, where a document asked for is on the face of it irrelevant, non-furnishing of such document is immaterial. Where, however, the document has got some relevance, refusal to supply such copy, inspite of specific request, without any valid reason, may have the effect of vitiating the order of detention as the detenu is likely to be prejudiced, inasmuch as he would not be in a position to make an effective representation.

27. In the above background, it is to be seen as to whether the representation of the detenu has received careful attention and whether the result of such consideration of representation has been communicated without avoidable delay. It has been already noticed that in the representation, a request had been made for furnishing copy of the remand order dated 30.03.2007, which was not complied with and no apparent reason has been given. We have already held that this had vitiated the order of detention. It is found from the chart furnished by the learned Additional Public Prosecutor that such representation dated 22.04.2007 was disposed of by the Minister on 09.05.2007 and the rejection letter prepared on 09.05.2007 was sent to the detenu on 11.05.2007. So far so good. It cannot be said that there had been any undue delay at that stage. However, it is further found that the rejection letter was served on the detenu only on 21.05.2007, after a lapse of about 10 days. It is no doubt true that the result must have been communicated through post. But, in the absence of any explanation, it cannot be assumed that such undue delay was on account of the postal delay. When the detention order has been challenged on the ground of delay in disposal of the representation, it was the duty of the respondent to bring on record all the factors explaining that there had been no remissness at any stage. In our considered opinion, the delay in



communicating the result of the representation, in the peculiar facts and circumstances of the present case, has also such effect of vitiating the order of detention."

6.The Honourable Full Bench of our High Court, while dealing with an identical issue, has held that law is well settled that the detaining authority is required to give copies of the relied upon documents along with grounds of detention and non-furnishing of relied upon documents has the effect of vitiating the order of detention. In the present case, admittedly, when the petitioner asked for furnishing a copy of the remand order and also a copy of the extension of remand order, the same have not been furnished till date. Therefore, following the decision of the Full Bench of our High Court mentioned supra, we have no option except to allow the present habeas corpus petitions.

7.For all the reasons above mentioned, the impugned detention orders dated 08.06.2019 passed by the second respondent in P.D.O.Nos.12 and 13/2019, are set aside and these petitions are allowed and the detenus viz., Suresh @ Balasubramanian and Sekar @ Sathiyasekaran in both petitions respectively, who are now detained at Central Prison, Tiruchirappalli are set at liberty. The Superintendent of Central Prison, Tiruchirappalli/third respondent is directed to release them forthwith, unless their presence is required in connection with any other case.

Sd/-

Assistant Registrar(CO)

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/ /2020

Sub Assistant Registrar(CS)

VS

To

1.The Principal Secretary to Government
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-09.

2.The District Magistrate & District Collector,
O/o.The District Magistrate and District Collector,
Pudukkottai District
Pudukkottai.



3. The Superintendent
Central Prison,
Tiruchirappalli.

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

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

H.C.P. (MD) Nos. 616 and 618 of 2019
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TR(11.03.2020) 6P 6C