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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)Nos.632, 641 and 643 of 2019

Eshwari ... Petitioner in HCP(MD)No.632 of 2019

Nagajothi ... Petitioner in HCP(MD)No.643 of 2019

Lakshmi ... Petitioner in HCP(MD)No.641 of 2019

Vs.

1.The State of Tamil Nadu,
Represented by its
Principal Secretary,
Home, (Prohibition and Excise Department),
Secretariate, Chennai -9.

2.The District Collector / District Magistrate,
Collectorate,
Ramanathapuram,
Ramanathapuram District.

3.The Superintendent of Central Prison,
Madurai Central Prison,
Madurai District. ... Respondents in all petitions

Prayer in HCP(MD)No.632 of 2019 : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records in detention order passed in TN.P.D.A.B.C.D.F.G.I.S.S.S.V.No.10/Goonda/2019 dated 02.07.2019 passed by the respondent No.2 and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely, S.Arun Kumar (25/2019) S/o. Shanmugavel who is confined at Central Prison, Madurai District before this Court and set him at liberty.

Prayer in HCP(MD)No.641 of 2019 : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records in detention order passed in TN.P.D.A.B.C.D.F.G.I.S.S.S.V.No.12/Goonda/2019 dated 02.07.2019 passed by the respondent No.2 and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely, Harish @ Harish Babu, S/o.Rajendran, who is confined at Central Prison, Madurai District before this



Court and set him at liberty.

Prayer in HCP(MD)No.643 of 2019 : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records in detention order passed in TN.P.D.A.B.C.D.F.G.I.S.S.V.No.11/Goonda/2019 dated 02.07.2019 passed by the respondent No.2 and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely, K.Anandaraj, aged about 30 years, S/o.Karuppaiah who is confined at Central Prison, Madurai District before this Court and set him at liberty.

For Petitioner : Mr.Mayil vahana Rajaendran for
Mr.K.Kulanthai Vikram
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor
in all petitions

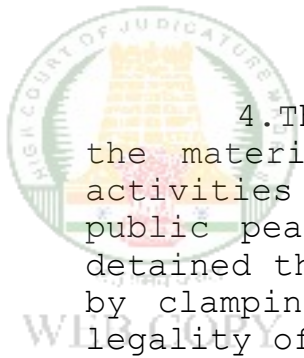
COMMON ORDER

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

One Eswari, mother of the detenu is the petitioner in HCP (MD)No.632 of 2019; Lakshmi, sister of the detenu is the petitioner in HCP(MD)No.641 of 2019; and Nagajothi, mother of detenu is the petitioner in HCP(MD)No.643 of 2019. Challenging the impugned order of detentions dated 02.07.2019 passed by the second respondent, branding the detenu as "Goondas" under the provisions of Section 3 [1] of the Tamil Nadu Prevention of Dangerous Activities of Boot leggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), they have filed the present habeas corpus petitions.

2.A perusal of the Grounds of Detention dated 02.07.2019, passed by the second respondent would show that the detenu came to the adverse notice in Crime No.166 of 2019, Kenikarai Police Station, for the offence under Sections 147, 148, 324, 302 and 201 IPC. It is further stated in the grounds of detention that when the defacto complainant, namely, Padmanaban, was bathing in Purandi Kanmoi, he heard a noise in Puzhuthikulam Kanmoi and when he went there he found that the detenu loaded the sand from the Kanmoi and used hitachi vehilcle and when his brother in law and others questioned about the loading of sand, the accused attacked them with sickle, iron rod and wooden log and in that incident, his brother in law Mohan died. In this regard, a case was registered in Crime No.166 of 2019 for the offence under Sections 147, 148, 324, 302 and 201 IPC.

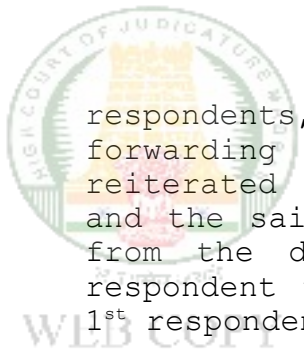
3.The detenu surrendered before the learned Judicial Magistrate No.II, Ramanathapuram on 18.06.2019 and they were ordered to be remanded to judicial custody. I



4.The Detaining Authority, on a perusal and consideration of the materials, has derived the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public peace and order and as such, branded them as Goondas and detained them under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the impugned orders of detention and challenging the legality of the same, the present Habeas Corpus Petitions are filed.

5.The learned Counsel appearing for the petitioners, attacking the validity of the impugned detention orders submitted the detenu were arrested and remanded into judicial custody in connection with the case registered by the Kenikarai Police Station in Crime No.166 of 2019, for the offence punishable under Sections 147, 148, 324, 302 and 201 IPC and the detenu filed bail petitions before the Principal District and Sessions Judge, Ramanathapuram in Crl.M.P. (MD).Nos.1610 and 1609 of 2019 respectively and they were dismissed on 19.06.2019. Subsequently, the detenu filed Criminal Original Petitions in Crl.O.P (MD) Nos.8933 and 8932 of 2019, respectively which were pending before this Court and pending these criminal original petitions, the impugned detention orders were passed without there being any basis to entertain the apprehension in the mind of the detaining authority that the detenu while coming out on bail, there is high possibility for further indulging in similar activities in future, which will be prejudicial to the maintenance of public peace and order.

6.Immediately, after the detention orders have been passed on 02.07.2019, the bail petitions pending before this Court were also withdrawn that would also clearly show that there is no fear or apprehension in the mind of the detaining authority to pass the detention orders. Therefore, a representation dated 06.07.2019 was moved requesting the second respondent to recall the impugned detention orders and one another detailed representation was also sent to the respondents. After receipt of the same, the 3rd respondent, the Superintendent of Prison, Madurai Central Prison, has willfully and deliberately failed to forward the same as per the mandate of Article 22(5) of the Constitution of India. A similar issue has already been dealt with by this Court, in H.C.P. (MD) No.108 of 2019, wherein, this Court by order dated 24.07.2019, specifically held that if any representation is given by the petitioner even after a short time of passing the detention order, the detaining authority as a matter of fact is duty bound to forward the same to the Government, failing which, the detention order itself is liable to be quashed. Therefore, the same ratio is binding on the respondents herein. The similar case referred to by the detaining authority is not a similar case, since, in the said case the detenu was the father of the deceased. In the present case, there is no such relationship between the deceased and the detenu. Hence, the orders of detention are liable to be set aside.



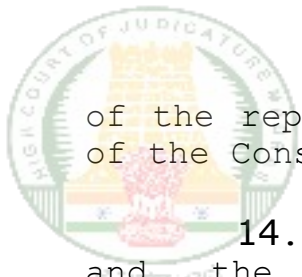
respondents, justifying the action taken by the 3rd respondent for not forwarding the representation dated 06.07.2019 to the first respondent, reiterated the stand that the detention order was passed on 02.07.2019 and the said representation was made on 06.07.2019, i.e. within 12 days from the date of passing of detention order and therefore, the 3rd respondent thought it fit for not forwarding the representation to the 1st respondent, since no subsequent events have taken place.

9. This Court has considered the rival submissions and also perused the entire materials placed before it.

10. As rightly pointed out by the learned Counsel for the petitioners, the similar case referred to by the detaining authority is not similar for the reason that the accused therein was the father of the deceased, but in the present case there is no such relationship between the deceased and the detenu. Moreover, a Full Bench of this Court in the decision reported in **(2007) 2 MLJ (Cr1.) 1841**, in the case of **G.Kalaiselvi vs. State of Tamil Nadu**, has held that the Detaining Authority is required to come to a conclusion that there is a imminent possibility of the detenu being released on bail. The question as to whether there is a possibility of being released on bail depends upon several factors, such as, nature of offence, stage of the investigation, the availability of statutory bail as envisaged under Section 167(2) proviso of Cr.P.C. Even though it is not possible nor desirable to enumerate the circumstances in which bail is likely to be granted, one can venture to say that it is very rare for a Court of law to grant bail during pendency of the investigation, when there are allegations of serious offences, such as, punishable under Section 302 or 395 IPC. In the light of the above reasons, it is wholly incorrect to say that there is a possibility of the detenu being released on bail.

12. Insofar as the non-forwarding the representation of the detenu is concerned, we are unable to accept the explanation given by the learned Additional Public Prosecutor, since the impugned order has been passed just 12 days prior to the representation dated 06.07.2019, it is only the perspective from which the case of the petitioner should be considered. The mandate of Article 22(5) of the Constitution of India has been completely forgotten.

13. A Division Bench of this Court, in H.C.P.(MD)No.108 of 2019, has also followed the ratio laid down in **Agalya Bhai vs. State of Tamil Nadu**, reported in **1997 (III) CTC 486 (DB)**, wherein, it was 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 found fault with the authorities for non-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, that it turn would definitely vitiate the orders of detention. In view of the above dictum the non-forwarding



of the representation of the defence is violative of Article 22(5) of the Constitution, hence, the impugned orders stand vitiated.

14. In the result, the Habeas Corpus Petitions are allowed and the orders of detention in TN.P.D.A.B.C.D.F.G.I.S.S.V.No.10/Goonda/2019, dated 02.07.2019, TN.P.D.A.B.C.D.F.G.I.S.S.V.No.12/Goonda/2019 dated 02.07.2019 and TN.P.D.A.B.C.D.F.G.I.S.S.V.No.11/Goonda/2019 dated 02.07.2019 passed by the second respondent, are set aside. The detenu, namely, Arunkumar, son of Shanmugavel, aged about 25 years, Harish @ Harish Babu, aged about 23 years S/o.Rajendran, and Anandaraj, aged about 30 years, S/O. Karuppaiah, who are now detained at Central Prison, Madurai, is directed to be released forthwith unless their presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To

- 1.The Principal Secretary,
Home, (Prohibition and Excise Department),
Secretariate, Chennai -9.
- 2.The District Magistrate and District Collector,
Ramanathapuram.
- 3.The Superintendent of Central Prison,
Madurai Central Prison,
Madurai District.
- 4.The Joint Secretary to Government,
Public(Law and Order),
Fort St.George, Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

H.C.P (MD) Nos. 632, 641
and 643 of 2019
14.02.2020

KK(16.09.2020) 5P 6C