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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) No. 650 of 2019

Revathi : Petitioner

Vs

1.State of Tamil Nadu rep. by the
The Secretary to Government
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-09.

2.The District Collector and
District Magistrate,
O/o.The District Collector and District Magistrate
Tiruchirappalli District,
Tiruchirappalli.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

: Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records pertaining to the detention order passed in Cr.MP.No.26 of 2019 dated 20.06.2019 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Suresh, S/o.Perumal, Male aged about 27 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.A.Joel Paul Antony
For Respondents : Mr.K.Dinesh Babu
Addl.Public Prosecutor

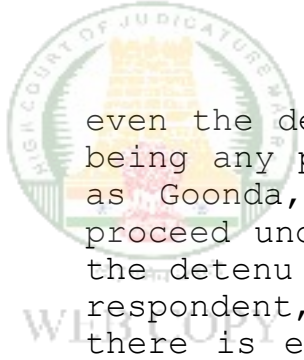
ORDER

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

This Habeas Corpus Petition has been filed challenging the correctness of the impugned detention order passed by the second respondent/District Collector and District Magistrate, Tiruchirappalli District, in Cr.MP.No.26 of 2019 dated 20.06.2019 branding the petitioner's husband viz., Suresh, S/o.Perumal as 'Sand Offender'.

<https://hcservices.ecourts.gov.in/hcservices/>

2.Mr.A.Joel Paul Antony, learned counsel for the petitioner, assailing the impugned detention order, pleaded that



even the detenu has involved only in a solitary case, without there being any previous case or any other incriminating case to call him as Goonda, being the owner of the lorry, has been subjected to proceed under the Act 14. Arguing further, he has stated that when the detenu has moved a bail application and the same is pending, the respondent, arbitrarily and unreasonably, came to a conclusion that there is every likelihood of the detenu coming out on bail by the Court concerned. According to him, that cannot be a legal reason to detain the detenu under the Goondas Act, for the reason that the said application is yet to be accepted or rejected.

3. It was again canvassed that the petitioner has sent a representation to the respondents 1 & 2 on 11.07.2019. Although the same was received on 15.07.2019 by the respondents, without even considering the genuine case of the petitioner, they rejected the same on 16.08.2019. But, till date, 17 days delay has not been explained by the respondents. Even in the counter affidavit filed by the second respondent, it is stated that there is an unexpected delay of 19 days in considering the representation of the petitioner, dated 11.07.2019. Hence, according to him, on the sole ground of delay, the impugned order stands vitiated and therefore, the present petition deserves to be allowed and a direction may be issued to the respondents to release the detenu.

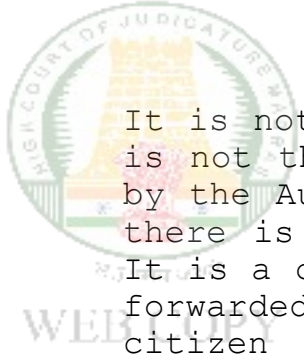
4. A detailed counter affidavit has been filed by the second respondent. Even after producing a proforma, learned Additional Public Prosecutor has attempted to justify the unexpected delay to the effect that from the date of representation i.e 11.07.2019, remarks relating to the representation made on behalf of the detenu had been called for on 15.07.2019 and the same had been received on 25.07.2019. Thereafter, the Office of the first respondent dealt with the representation on 16.08.2019. As such, there has been a delay of 19 days. Between 25.07.2019 and 16.08.2019, there are 8 intervening holidays. Thus, there has been an actual delay of 11 days.

5. In support of his contentions, the learned counsel appearing for the petitioner had relied on the decision of this Court, in **Sumaiya Vs The Secretary to Government**, reported in **2007 (2) MWN (Cri.) 145, (DB)**, to state that even a delay of three days in considering the representation is fatal to the detention order passed by the Detaining Authority concerned. He had further submitted that the unexplained delay caused in considering the representation would vitiate the detention order passed by the Detaining Authority.

6. The learned counsel has also relied upon a decision, in **Venkatesan @ Maya Venkatesan (2007(1) MLJ (Cr1.) 1176)**, it has been held as follows:

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10..... thus it is clear that the Government is bound to explain the delay, if any, in disposing of the representation.



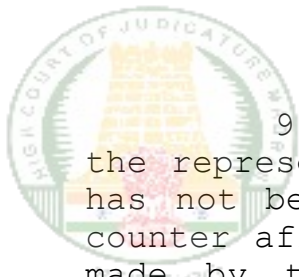
It is not enough to say that the delay was very short. The test is not the duration or range of delay, but how it is explained by the Authority concerned. In this case, as pointed out above, there is absolutely no explanation for the delay of four days. It is a constitutional obligation to consider the representation forwarded by the detenu without any delay, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Hence, on this ground also the order of detention is liable to be quashed."

7. In **Kalaiselvi.G. Vs. The State of Tamil Nadu (2007 (5) CTC 657)**, a Full Bench of this Court had held as follows:

"26. The last contention is relating to delay in disposal of the representation. It is by now well recognised that the authorities concerned are duty bound to afford to the detenu an opportunity of making representation and such right of the detenu obviously encompasses the corresponding duty that the representation must receive careful and expeditious attention and should be disposed of without any unnecessary delay and the result of such representation should also be communicated without unnecessary delay. This position is apparent from several decisions of the Supreme Court, including the decision *Usha Agarwal vs. Union of India and others* (2007 (1) SCC 295), wherein, after referring to the Constitution Bench decision of the Supreme Court in *Kamleshkumar Ishwandas Patel vs. Union of India*, (1995) 4 SCC 51, it was observed:

This Court has also repeatedly held that though there can be no specific or mechanical test for determining whether there has been undue delay, where there is an unexplained delay in either making the order or serving the order, it would vitiate the order of detention."

8. In **Rekha Vs. State of Tamilnadu (2011(5) SCC 244)**, it has been held that the personal liberty of a person is protected, under Article 21 of the Constitution of India. As it is so sacrosanct and so high in the scale of constitutional values, there is an obligation on the part of the Detaining Authority to show that, while passing the impugned order of detention, the procedures established by law have been meticulously followed. The procedural safe guards 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.



9. In the present case, the delay caused in the disposal of the representation, dated 11.07.2019, made on behalf of the detenu, has not been properly explained by the respondents, either in the counter affidavit filed on their behalf, or in the oral submissions made by the learned Additional Public Prosecutor, appearing on behalf of the respondents. In such circumstances, in view of the decisions cited supra, this Court is of the view that there is no proper justification on the part of the respondents for causing 11 long days delay. As the delay has not been sufficiently explained, we hold that the action of the respondent violates Article 22(5) of the Constitution of India. In view of the above facts and circumstances of the case, we have no other option except to allow this petition.

10. Accordingly, this petition is allowed. Consequently, the impugned detention order passed by the second respondent in Cr.M.P.No.26/2019 dated 20.06.2019 is set aside and the detenu Suresh, S/o.Perumal, Male aged about 27 years, who is detained in Central Prison, Tiruchirappalli is set at liberty. The Superintendent of Central Prison, Tiruchirappalli/third respondent is directed to release him forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar (w)

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/ /2020

Sub Assistant Registrar(CS)

vs

To

1. The Secretary to Government
Home, Prohibition & Excise Department,
Fort St. George, Chennai-09.
2. The Joint Secretary to Government,
Public (Law and Order)
Fort St. George, Chennai.
3. The District Collector and
District Magistrate,
O/o. The District Collector and District Magistrate
Tiruchirappalli District, Tiruchirappalli.
4. The Superintendent,
Central Prison, Tiruchirappalli.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.