



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

H.C.P. (MD)No.723 of 2019

Pitchaikani @ Pitchaikalai

: Petitioner

Vs.

1.State of Tamil Nadu represented by its
The Principal Secretary to Government/
Home, Prohibition and Excise Department
Fort St. George, Chennai.

2.The District Magistrate and District Collector,
Virudhunagar District,
Virudhunagar.

3.The Superintendent,
Central Prison
Madurai.

: 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 in detention order passed in Detention order in Cr.M.P.No.08/2019 (Goonda) dated 05.07.2019 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the person or body of the petitioner's brother namely, Subramani @ Subramanian, son of Pandi @ Pandian, aged about 38 years, confined at Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.R.Mathiyalagan

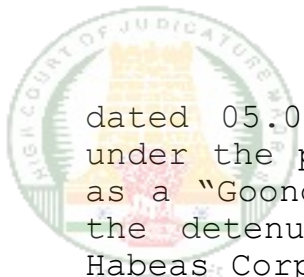
For Respondents : Mr.K.Dinesh Babu

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 Cr.M.P.No.08/2019 (Goonda)



dated 05.07.2019, 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/Pitchaikani @ Pitchaikalai, father of the detenu, namely, Chiranjeevi, is before this Court with this Habeas Corpus Petition.

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2.As per the grounds of detention, dated 05.07.2019, the detenu came under adverse notice in one adverse case and in the ground case, which was registered in Crime No.140/2019 on the file of the Aruppukottai Police Station, who is the sponsoring authority, for offence under Sections 302 IPC r/w 3(2) (V) of SC/ST (POA) Amendment Act, 2018.

3.Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would raise his first plea by stating that there is no justification or basis for the second respondent to brand the detenu as Goonda. He would focus his argument on the ground that when the detenu has not even moved any bail application, it is highly unacceptable and far from acceptance for the detaining authority to arrive at a conclusion that the similarly placed persons have been granted bail in Cr.M.P.No.6666 & 6667 of 2012 by the concerned Court.

4. The learned counsel would further contend 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 on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon'ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

5. 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.

6. In this case, the Detention Order was passed on 05.07.2019. As against the same, the petitioner made a representation on 22.07.2019. The remarks were called for by the Government from the Detaining Authority on 30.07.2019. 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.



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

8. 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.

9. 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.

10. 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 and therefore, 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, Chiranjeevi, S/o. Pitchai Kani @ Pitchaikalai aged about 38 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 ()

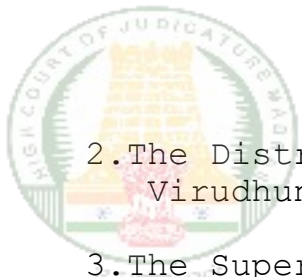
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/ /2020

Sub Assistant Registrar(CS)

To

1.The Principal Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Chennai.



2.The District Magistrate and District Collector,
Virudhunagar District, Virudhunagar.

3.The Superintendent,
Central Prison,
Madurai.

4.The Joint Secretary to Government Public (Law & Orders)
For St.Gorge, Chennai 09.

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

+1 CC to M/s.R.MATHIYALAGAN, Advocate (SR-416[F] dated 07/01/2020)

Order made in
H.C.P. (MD) No.723 of 2019
Dated: 06.01.2020

RR
SDS (04.02.2020) 4P-7C