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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **03.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P.(MD) No.762 of 2019

Durai @ Chinnadurai

... Petitioner

versus

1. State of Tamil Nadu,
Rep. by its the Principal Secretary
to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.

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

3. The Superintendent,
Central Prison,
Madurai.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Habeas Corpus, to call for the records relating to the Detention Order passed by the 2nd respondent in Detention Order No.37/2019, dated 26.06.2019 and quash the same and direct the respondents to produce the body or person of the Detenu, namely, Durai @ Chinnadurai, S/o.Vellaisamy aged about 22 years (now detained at Central Prison, Madurai) before this Court and set him at liberty.

For Petitioner	: M/s.B.Arun
For Respondents	: Mr.K.Dinesh Babu, Additional Public Prosecutor

ORDER

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

The petitioner detenu, having suffered impugned detention order dated 26.06.2019 branding him as "Goonda", has come to this Court, questioning the correctness and validity of the impugned detention order, dated 26.06.2019 passed by the second respondent, namely, the District Collector and District Magistrate, Dindigul.



2. The learned counsel appearing for the petitioner submitted that when the detenu, petitioner herein, involved in only a wordy quarrel, he was booked in connection with the case in Cr.No.162 of 2019 for the offence under Sections 341, 307 and 506 (ii) IPC, which is the only ground case. The petitioner has also involved in two adverse cases, one in Cr.No.612/2018 for offence under Sections 294(b), 323, 324 and 506(ii) IPC and yet another adverse case in Cr.No.24/2019 for offence under Sections 294(b), 324 and 506(ii) IPC. When the matter stands above, the petitioner moved a bail application in the ground case that was dismissed by the learned Judicial Magistrate, Palani, against which, an application was preferred before the learned District Judge, Dindigul, which is also pending. In respect of the first adverse case in Cr.No.612/2018, the petitioner was granted bail on 12.11.2018. Therefore, he has not moved any bail application for the second adverse case. Whereas, the detaining authority in para 5 of the impugned order has wrongly mentioned a similar case, which is not related to the detenu/petitioner herein. Therefore, that cannot be construed as a similar case, although the same was registered for the offence under Sections 147, 148, 341, 342, 324, 307 and 506(ii) IPC. Finally, concluding his argument, he would submit that when the detenu has given a detailed representation stating that he cannot be brought under the Tamil Nadu Act 14 of 1982, branding him as "Goonda", the said representation has not seen the light of the day promptly. But, the rejection order was passed with a huge delay of 29 days. Therefore, for not promptly considering the representation given by the detenu, by taking as usual convenient and comfortable time to dispose of the representation dated 31.07.2019 made by the detenu, the impugned order, as per the ratio laid down by the Hon'ble Apex Court in the case of ***Rekha vs. State of Tamil Nadu***, reported in ***2011 (5) SCC 244***, is liable to be quashed.

3. Opposing the above prayer, the learned Additional Public Prosecutor appearing for the respondents submitted that it is not open to the petitioner to canvass before this Court that there is no similarity involved in the case cited by the second respondent. Since there is a similarity between the case of the petitioner and the case as cited by the second respondent in the impugned order, where bail was granted, the petitioner cannot maintain the petition. More particularly, it is an admitted case that the detenu has involved in Cr.No.162 of 2019 for the offence under Section 341, 307 and 506(ii) IPC, which is related to the ground case, whereas, in the first adverse case registered in Cr.No.612/2018, he was booked for the offences punishable under Sections 294(b), 323, 324 and 506 (ii) IPC. In similar case cited in para 5 of the impugned detention order, the offences punishable under Sections 147, 148, 341, 342, 324, 307 and 506(ii) IPC have been cited. However, in that case,



bail was granted. Therefore, the detaining authority has rightly mentioned about the similar case and no fault can be found thereon.

4. A perusal of the proforma produced by the learned Additional Public Prosecutor shows that the representation dated 31.07.2019 was received by the respondent on 06.08.2019 and on the same day, remarks were called for and remarks were received on 20.08.2019. The said remarks were taken on file on the same day and it was also dealt with by the Under Secretary and Deputy Secretary on the same day itself. However, it was dealt with by the Minister on 19.09.2019 and after four more days, the rejection order was passed, i.e. on 24.09.2019. Therefore, there was a delay of 29 days in considering the representation given by the petitioner, between that period, there was 11 intervening holidays, therefore, there was only a delay of 18 days in considering the representation given by the petitioner. However, that delay of 18 days has not been properly explained by the respondent.

5. 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.

6. Again, in **Tara Chand Vs. State of Rajasthan and others**, reported in [1980 (2) SCC 321], the Honourable 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.

7. 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 when the respondents have not given any valid reasons explaining the delay of eighteen days, the impugned detention order is liable to be quashed. Resultantly, the impugned order is quashed.

8. In the result, the Habeas Corpus Petition is allowed by setting aside the order of detention passed by the second respondent herein, namely, the District Collector and District Magistrate, Dindigul District, in No.37/2019, dated 26.06.2019. Consequently, the detenu, namely, Durai @ Chinnadurai, S/o.Vellaichamy, aged about 22 years, who is now detained at Central Prison, Madurai, 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

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Sub Assistant Registrar(CS)

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To

1. The Principal Secretary
to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Dindigul District,
Dindigul.
3. The Superintendent,
Central Prison,
Madurai.
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

+1 CC to Mr.B.ARUN, Advocate (SR-238[F] dated 03/01/2020)

H.C.P. (MD) No.762 of 2019

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