



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **09.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

and

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD) No.813 of 2019

Subbaiah @ Mani

... Petitioner/Detenu

versus

1. State of Tamil Nadu,

Rep. by the Additional Chief Secretary

to Government,

Home, Prohibition and Excise Department,

Fort St. George,

Chennai - 600 009.

2. The District Collector and District Magistrate,

Tirunelveli District,

Tirunelveli.

3. The Superintendent of Prison,

Central Prison,

Palayamkottai,

Tirunelveli.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Habeas Corpus, calling for the entire records connected with the detention order passed in M.H.S.Confdl No.57/2019 dated 29.07.2019 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, Subbaiah @ Mani, aged about 23 years, S/o.Sudalaikkannu, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.K.Dinesh Babu,

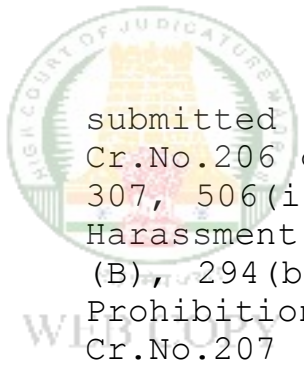
Additional Public Prosecutor

ORDER

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

Subbaiah @ Mani, aged about 23 years, S/o.Sudalaikkannu, has suffered the impugned detention order dated 29.07.2019 passed by the District Collector and District Magistrate, Tirunelveli District, the second respondent herein, under Section 2(f) of the Tamil Nadu Act No.14 of 1982, branding him as "Goonda".

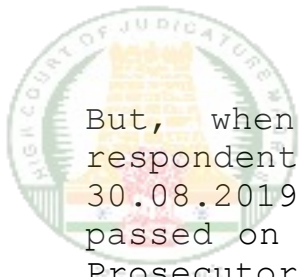
<https://hcservices.ecourts.gov.in/hcservices/> The learned counsel appearing for the petitioner



submitted that the detenu suffered two adverse cases, one in Cr.No.206 of 2019 for the offence punishable under Section 294(b), 307, 506(ii) IPC read with Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002, altered into Section 147, 148, 120 (B), 294(b), 307, 506(ii) IPC, read with Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002 and another one in Cr.No.207 of 2019 for the offence punishable under Sections 448, 294(b), 506(ii) IPC and Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act 1992. In addition to that, the detenu has also suffered a ground case in Cr.No.121 of 2019 for the offence punishable under Section 294(b), 302 and 506(ii) IPC. After remanding the petitioner in the ground case, he was not informed of the arrest in both the adverse cases. The learned counsel further submitted that non furnishing of any details of arrest in adverse cases would amount to clear infraction of the dictum laid down by the Apex Case in the case of **D.K.Basu vs. State of West Bengal** reported in **AIR 1997 SC 610** and such infraction would definitely vitiate the subjective satisfaction derived by the Detaining Authority. The learned counsel, by taking support from the order dated 03.07.2019 passed by this Court in H.C.P.(MD)Nos.75, 80 and 88 of 2019, in which, one of us was a party, proceeded to the second contention that when three detailed representations were given on 13.08.2019, they were received by the respondents on 29.08.2019. After calling for remarks, the respondents came to reject the said representations finally on 23.09.2019. In the meanwhile, there has been a huge and inordinate delay in considering the said representations. However, there was no explanation on the side of the respondents for the inordinate delay in considering the said representation. On that score, the impugned detention order is once again liable to be quashed.

3. Mr.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents, producing a copy of the proforma, informed us that after the receipt of three representations in all three cases, i.e. one ground case and two adverse cases on 29.08.2019, remarks were called for on the same day and on receipt of the said remarks on 30.08.2019, they were perused with seriousness and on considering the same, they were rejected, by an order dated 23.09.2019 and the same was sent to the detenu on 24.09.2019. However, there was a delay of 19 days between 30.08.2019 and 19.09.2019 and between that period, there were 8 intervening holidays. Considering the intervening holidays, there was only 11 days delay. That 11 days delay has taken place only due to the exigencies met out by the Department.

4. We are unable to agree with the said explanation. The reason being that when the petitioner has given three representations on 13.08.2019, they were received on 29.08.2019.



But, when the files were taken to the office of the first respondent on 30.08.2019, they have not moved further from 30.08.2019 till 19.09.2019 and the rejection order came to be passed on 23.09.2019. As argued by the learned Additional Public Prosecutor, no doubt, there were 19 days delay in between 30.08.2019 and 19.09.2019 and there were 8 intervening holidays as explained as above. These 11 days delay has also not been properly explained by the respondents.

5. While dealing with the delay in disposing of the representation by the Government in detention cases, this Court, in the case of **Venkatesan @ Maya Venkatesan, reported in (2007(1) MLJ (Cr1.) 1176)**, it has been held as follows:

"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."

6. In yet another case, this Court, by an order dated 03.07.2019, in H.C.P.(MD)Nos.75, 80 and 88 of 2019, has held as follows:

".... Though it was open to the Sponsoring Authority to give the arrest intimation to the relatives of the detenu. as done in the ground case, it was not done, in respect of the second adverse case. The said act of the Sponsoring Authority is in contravention of the dictum laid down by the Hon'ble Apex Court in the case of **D.K.Basu v. State of West Bengal**, reported in **(1997) 1 SCC 416** and the said infraction would definitely vitiate the subjective satisfaction derived by the Detaining Authority and as such, the impugned orders of detention are liable to be set aside."

7. In the light of the above precedent, if we look at the case on hand, there was an inordinate delay of 11 days in considering the representations given by the petitioner and that delay has also not been explained by the respondents. Moreover, when the respondents have not explained the delay, we hold that the action of the respondents violates Article 22(5) of the Constitution of India. Following the dictum laid down by this Court in **supra**, we are, therefore, inclined to quash the



impugned detention order.

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, Tirunelveli District, in M.H.S.Confdl No.57/2019, dated 29.07.2019. Consequently, the detenu, namely, Subbaiah @ Mani, S/o.Sudalaikkannu, aged about 23 years, who is now detained at Central Prison, Palayamkottai, 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 (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Additional Chief Secretary
to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Joint Secretary to Government,
Public(law and order) Fort St. George,
Chennai - 600 009.
- 5.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.813 of 2019

09.01.2020

KM/ (07.02.2020) 4P 6C