



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.832 of 2019

Kasthuri

... Petitioner

versus

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police,
Madurai City,
Madurai.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... 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 entire records connected with the detention order of the respondent No.2 in No.46/BCDFGISSSV/2019 dated 30.07.2019 and quash the same and direct the respondents to produce the petitioner son's body and person of by name Prabhakaran @ China Prabhakaran, S/o.Vairavel, aged 25 years, was detained as a 'Goonda' at Madurai Central Prison before this Court and set him at liberty forthwith.

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

ORDER

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

The petitioner is the mother of the detenu viz., Prabhakaran @ China Prabhakaran, S/o.Vairavel, aged about 25 years. The detenu has been detained, as per the order of the second respondent, dated 30.07.2019, under Section 2(f) of the Tamil Nadu Act 14 of 1982,



branding him as "GOONDA". Challenging the same, the petitioner is before this Court in this Habeas Corpus Petition.

2. Mr.R.Venkatesan, learned counsel appearing for the petitioner submitted that the detenu suffered one ground case registered in Cr.No.165 of 2019, by B5 Southgate Police Station, for the offence under Sections 341, 302, 506(ii) IPC and subsequently, altered to Sections 147, 148, 341, 302, 506(ii), 120 (b), 109 and 201 IPC. The detenu, in the ground case, after surrendering before the learned Judicial Magistrate No.IV, Madurai, on 06.05.2019, was remanded to judicial custody at Central Prison, Madurai, till 20.05.2019 and it was subsequently extended upto 09.08.2019. However, the English version of the remand extension order dated 17th June 2019 shows the name of the Judicial Officer as Thiru M.Padmanaban, B.A., B.L., whereas, the Tamil version of the remand extension order shows the name of the Judicial Officer as Thiru.C.R.Gowthaman, B.Sc. M.L. Therefore, the defective translated copy of the remand extension order dated 17.06.2019 showing another officer, namely, Thiru.M.Padmanaban, B.A., B.L., instead of Thiru.C.R.Gowthaman, clearly indicates that the respondent has not applied his mind. In support of the contention, the learned counsel relied upon a Judgment of this Court, in the case of **Mannu @ Boopathy vs. the Secretary to Government, Prohibition and Excise Department, Secretariat, Chennai and another**, reported in **2005 (1) CTC 47** and submitted that if the translated version from English to Tamil is not correctly made, the said defective translation would make vitiate the detention order

3. The learned counsel for the petitioner also submitted that the detenu moved a bail application in CrI.No.3004 of 2019 before the learned Principal Sessions Judge, Madurai and the same was dismissed on 22.07.2019. Thereafter, the detenu has not filed any bail application. While so, the second respondent, after knowing pretty well that there was no bail application filed by the detenu, after the dismissal of his previous bail application on 22.07.2019, has passed the detention order stating that there is a real possibility of the detenu coming out on bail by filing further bail application in the ground case before the court concerned, since bail was granted to his co-accused in the said ground case by the concerned Court. It clearly shows that the detaining authority has not applied his mind while passing the detention order.

4. Apart from this, the learned counsel appearing for the petitioner further submitted that though the petitioner made two representations on 20.08.2019 to the respondents, the rejection order was sent to the detenu only on 23.09.2019. In the meanwhile, there has been a huge delay of 23 days in disposing of the said representations, which also violates the mandatory principles adumbrated in Article 22(5) of the Constitution of India. Further, there was no explanation for the said delay in disposing of the



representations made by the petitioner. On that ground also, the impugned order is liable to be quashed.

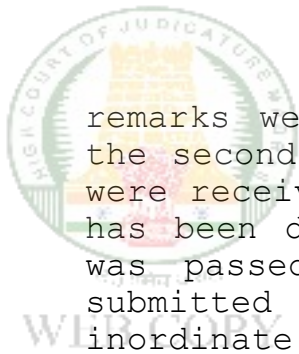
5. Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents stated that in the similar ground case, one Manikandan, co-accused moved a bail application before the learned Principal Sessions Judge, Madurai and he was released on bail. Therefore, the second respondent has rightly come to the conclusion that if the detenu moves another bail application and since the co-accused in the said ground case was granted bail, he would be granted bail and he will come out on bail and thereafter, he will indulge in future activities which will be prejudicial to the maintenance of public order. Therefore, the order of detention passed by the second respondent does not require any interference. Furthermore, the detenu has also suffered five adverse cases in addition to the ground case. Therefore, the detention of order passed by the second respondent is correct and reasonable.

6. Insofar as the delay point is concerned, the learned Additional Public Prosecutor submitted that though there was a 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.

7. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor.

8. A perusal of the detention order shows that the five adverse cases, which were registered against the detenu, have not been mentioned in the detention order.. But, the second respondent simply passed the detention order on the ground that the co-accused in the similar ground case was enlarged on bail and hence, there is a possibility of the detenu coming out on bail by filing further bail application. Instead of citing that, the detaining authority could have referred to five adverse cases registered against the detenu while passing the impugned order. But, the same has not been done. It also clearly shows that the sponsoring authority and detaining authority have not applied their mind while passing the order. The detaining authority, whenever happens to pass an order of detention, should cross-check whether there was any other adverse cases registered against the detenu. But, in this case, both the sponsoring authority as well as the detaining authority have failed to look into this aspect, which also reflects the subjective satisfaction.

9. In this case, the Detention Order was passed on 30.07.2019. As against the same, the petitioner made two representations on the same day, i.e. on 20.08.2019, but the same



remarks were called on the first representation on 22.08.2019 and the second representation on 04.09.2019 and thereafter, the remarks were received on 26.08.2019 and 06.09.2019 respectively and the same has been dealt with on the same day. However, the rejection order was passed on 23.09.2019. Since in between the date of file submitted and till the date of rejection order, there was a huge inordinate and unexplained delay of 23 days on the part of the Government in considering the first representation. The copy of the proforma produced by the learned Additional Public Prosecutor shows that there are 8 intermittent Government holidays and even after excluding the holidays, there is a delay of 15 days, which is unexplained on the part of the detaining authority and hence, on that ground, the order of detention is liable to be interfered with.

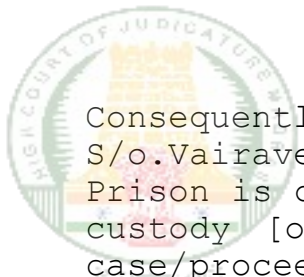
10. In ***Rekha Vs. State of Tamil Nadu***, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further held that the procedural safeguards are required to be zealously 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.

11. 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.

12. 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 15 working days and when the respondents have not given any valid reasons explaining the delay of fifteen days, the impugned detention order is liable to be quashed.

13. Furthermore, as rightly contended by the learned counsel appearing for the petitioner, the mandate of Article 22(5) of the Constitution of India has been violated by the detaining authority and on that score also, the impugned detention order is liable to be quashed.

14. In the result, the Habeas Corpus Petition is allowed by setting aside the order of detention passed by the second respondent, in No.46/BCDFGISSSV/2019 dated 30.07.2019.



Consequently, the detenu, namely, Prabhakaran @ China Prabhakaran, S/o.Vairavel, aged 25 years, who is now detained at Madurai Central Prison is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

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Sd/-

Assistant Registrar (CO)

// True Copy //

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Sub Assistant Registrar(CS)

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police,
Madurai City,
Madurai.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
4. The Joint Secretary to Government,
Public (Law and Order)
For St. George, Chennai-600 009
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

OGY

TE : 12/03/2020 : 5P/6C

H.C.P. (MD) No.832 of 2019
06.02.2020