



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

AND

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

H.C.P. (MD) No. 872 of 2019

Louis : Detenu cum Petitioner

Vs.

1. State of Tamil Nadu, rep by its
Additional Chief Secretary to Government,
Prohibition & Excise Department,
Fort St. George,
Chennai-600 009.

2. The District Collector & District Magistrate,
Sivagangai District,
Sivagangai.

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, calling for the records relating to the detention order passed by the 2nd respondent in Cr.M.P.No.14/Goonda/2019 dated 27.07.2019 quash the same and direct the respondents to produce the body of the detenu Louis, son of Kulanthai Jesuraj (now detained at Central Prison, Madurai) before this Court and set him at liberty.

For Petitioner : Mr.V.Kannan
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

(Order of the Court was made by T.RAJA., J)

The petitioner is the detenu viz., Louis, son of Kulanthai Jesuraj, aged about 40 years and the detenu has been detained, as per the order of the second respondent, dated 27.07.2019, 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. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.

3. The Sponsoring Authority had recommended for the detention of the Petitioner under Act 14 of 1982 on a solitary case registered against the Petitioner and the Petitioner was thereafter arrested in the said case. The Detaining Authority has branded the detenu as a 'Goonda' and has passed the Detention order, dated 27.07.2019.

4. Learned counsel for the petitioner, assailed the impugned order, *inter alia*, on the ground 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 properly and seriously 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 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.

6. We have considered the above submissions.

7. We have perused the observation mahazer at page Nos. 23 and 24 as well as the copy of the FIR at page Nos. 97 and 98, we are unable to read even one sentence there from. Secondly, in the remand extension order dated 01.07.2019 passed by the learned Judicial Magistrate No. I, Sivagangai has also failed to mention the crime number, which was registered against the detenu and his name was also not mentioned. Therefore, the detenu has also asked for tamil translation of remand extension order, as his remand has not been extended by mentioning his name and the crime number. Therefore, the detenu has made a representation dated 06.08.2019.

8. In this case, the Detention Order was passed on 27.07.2019. As against the same, the petitioner made a representation on 06.08.2019 and the same has been received on 08.08.2019, immediately, the remarks were called for on 09.08.2019, then, the same were received on 30.08.2019 and again, the same has been dealt with on the same day. Finally, rejection order was passed on 23.09.2019. Since in between the date of submitting the

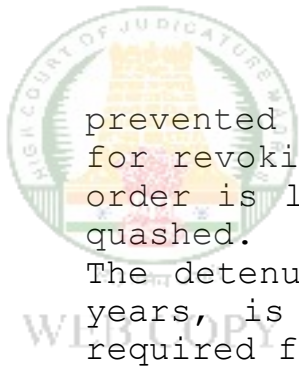


representation till the date of rejection order, there was a huge inordinate and unexplained delay of 11 days on the part of the Government in considering the representation. The copy of the proforma produced by the learned Additional Public Prosecutor shows that there are 8 intermittent Government holidays i.e 31.08.2019, 01.09.2019, 02.09.2019, 07.09.2019, 08.09.2019, 10.09.2019, 14.09.2019 and 15.09.2019 between 30.08.2019 and 19.09.2019 and even after excluding the holidays, there is a delay of 11 days, which is unexplained on the part of the detaining authority and hence, on the sole ground, the order of detention is liable to be interfered with.

9. In similar occasion, the Hon'ble Apex Court in **Rekha Vs. State of Tamil Nadu**, [2011 (5) SCC 244], 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 Apex 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.

10. Again, 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.

11. Therefore, 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 11 working days and when the respondents have not given any valid reasons explaining the delay of 11 days, the impugned detention order stands vitiated, in the light of mandatory condition mentioned in Article 22(5) of the Constitution of India, wherein, it is held that the authority making the order shall, as soon may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. When such clause 22(5) says that earliest opportunity of making a representation against the order, the said analogy will equally apply to the respondents for disposing of the said representation with a speaking order. In the present case, there has been delay in considering the representation. Therefore, right to consider his representation has been denied. Further, the copy of observation mahazer as well as the copy of the FIR are not clear and in the remand extension order dated 01.07.2019 passed by the learned Judicial Magistrate No.I, Sivagangai, the crime number, which was registered against the detenu and his name was also not mentioned. This also



prevented the petitioner from making an effective representation for revoking the order of detention. On these scores, the impugned order is liable to be quashed. Resultantly, the impugned order is quashed. Consequently, this Habeas Corpus Petition is allowed. The detenu, namely Louis, son of Kulanthai Jesuraj, aged about 40 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(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ns

To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Prohibition & Excise Department,
Fort St.George,
Chennai-600 009.
- 2.The District Collector & District Magistrate,
Sivagangai District,
Sivagangai.
- 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 M/s.V.KANNAN, Advocate (SR-4629[F] dated 04/02/2020)

Order made in
H.C.P. (MD) No.872 of 2019
04.02.2020

NA (CO)

TR(05.03.2020) 4P 7C