



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.845 of 2019

Balamurugan

... Petitioner

versus

1. The Additional Chief Secretary to the Government,
Home, Prohibition and Excis Department,
Secretariat,
Chennai - 600 009.

2. The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in C.No.19/Detention/C.P.O/T.C./2019 dated 29.07.2019 in detaining the detenu under Section 2(f) of the Tamilnadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the Detenu, namely, Sathiyagiri, S/o.Sivakumar, Male, aged about 25 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : M/s.K.M.Karunakaran

For Respondents : Mr.K.Dinesh Babu,
Additional Public Prosecutor

ORDER

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

The petitioner is the brother of the detenu viz.,
Sathiyagiri, S/o.Sivakumar, aged about 25 years. The detenu has been
<https://hcservices.ecourts.gov.in/hcservices/>



detained, as per the order of the second respondent, dated 29.07.2019, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "GOONDA". Challenging the same, the petititioner is before this Court in this Habeas Corpus Petition.

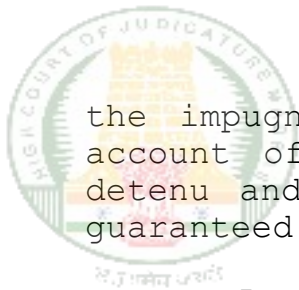
2.A perusal of the Grounds of Detention dated 29.07.2019, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Sathiyagiri, came to the adverse notice in the following cases:-

Sl . No .	Name of the Police Station and Crime No.	Section of Law
1.	Tiruchirappalli, Srirangam Police Station, Cr.No.676/2018	U/s.294(b), 323, 307 IPC @ 294(b), 341, 302 IPC
2.	Tiruchirappalli, Srirangam Police Station, Cr.No.107/2019	U/s.294(b), 323, 506(i) IPC r/w. 4 of TNPWH Act 2002
3.	Tiruchirappalli, Srirangam Police Station, Cr.No.229/2019	U/s.294(b), 323, 506(ii) IPC

It is further stated in the grounds of detention that the detenu was involved in a case for the commission of offences under Sections 147, 148, 294(b), 307 IPC in Srirangam Police Station in Crime No.306 of 2019 (ground case). The detenu was arrested on 23.06.2019 and produced before the Court of Judicial Magistrate No.III, Tiruchirappalli on the same day and remanded to Judicial custody. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention and making a challenge to the same, the present Habeas Corpus Petition has been filed by the petitioner.

3. Learned counsel for the petitioner, assailed the impugned order, interalia, 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.

4. 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.

5. We have considered the above submissions.

6. In this case, the Detention Order was passed on 29.07.2019. As against the same, the petitioner made a representation on 07.08.2019 and the same has been received on 09.08.2019, but, the remarks were received on 21.08.2019 and the same has been dealt with only on 19.09.2019. Finally, 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 28 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 10 intermittent Government holidays and even after excluding the holidays, there is a delay of 18 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.

7. 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.

8. 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.

9. 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. Consequently, this Habeas Corpus Petition is allowed. The detenu, namely Sathiyagiri, S/o.Sivakumar, aged about 25 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 (AD-I)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
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

H.C.P. (MD) No.845 of 2019

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VB(12.03.2020) 4P 6C