



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2020

CORAM:

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

and

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

H.C.P. (MD) No.850 of 2019

Thangaraj

... Petitioner/Father of Detenu

versus

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector & District Magistrate,
Pudukkottai District,
Pudukkottai.
3. The Superintendent of Police,
Central Prison,
Trichy.

... 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 P.D.O.No.24 of 2019 on 29.07.2019 and quash the same and direct the respondents to produce the body or person of the detenu, namely, Suresh, son of Thangaraj, aged about 30 years (now detained at Central Prison, Trichy), before this Court and set him at liberty.

For Petitioner : Mr.D.Ramesh Kumar

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

ORDER

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

The petitioner herein, who is the father of the detenu, namely, Suresh, aged about 30 years, has filed this petition
<https://hcservices.ecourts.gov.in/hcservices/>



challenging the validity of the impugned detention order dated 29.07.2019 passed by the second respondent/District Collector and District Magistrate, Pudukkottai, in P.D.O.No.24 of 2019, as against his son, branding him as "Sexual Offender" as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982.

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2. Learned counsel appearing for the petitioner made his submission on three-fold. Firstly, when there is one ground case registered against the detenu, in Cr.No.6 of 2019 for the offence under Section 5(j)(ii) r/w. 6, 5(I)(m) r/w 6 of Protection of Children from Sexual Offences Act 2012 & 506(i) IPC, he has been implicated in yet another adverse case that was also registered in Cr.No.48 of 2015, by Vellanur Police Station, for the offence under Sections 147, 148, 341, 294(b), 324, 307 IPC. After the detenu was arrested on 11.07.2019, he was remanded to judicial custody on 25.07.2019. But, the remand order dated 11.07.2019 nor the remand extension order dated 25.07.2019 extending the judicial custody of the detenu till 08.08.2019 have been furnished to the family members of the detenu. Even the booklet furnished by the respondents thus clearly shows that neither the remand order dated 11.07.2019 nor the remand extension order dated 25.07.2019 have been produced that would vitiate the impugned detention order. Secondly, though the petitioner made a representation on 13.08.2019, there was a huge delay in considering the said representation, that would also vitiate the order of detention. Thirdly, a similar case has been cited in para 3 of the impugned detention order, however, no particulars with regard to the similar case have been furnished. Therefore, on these three grounds, the detention order is liable to be quashed.

3. 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.

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

5. In this case, the Detention Order was passed on 29.07.2019. As against the same, the petitioner made a representation on 13.08.2019 and the same has been received on 19.08.2019 and the remarks were received on 29.08.2019, but, the same has been dealt with on 19.09.2019. Finally, rejection order was passed on 23.09.2019 and the same was communicated to the detenu on 24.09.2019. Since in between the date of file submitted and till the date of rejection order, there was a huge inordinate and unexplained delay of 21 days on the part of the Government in considering the representation. The copy of the proforma produced by

<https://hccases.courts.gov.in/cases/Accs/>



intermittent Government holidays and even after excluding the holidays, there is a delay of 13 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.

6. 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.

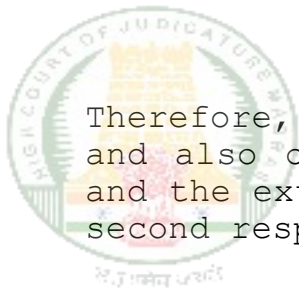
7. In ***Sumaiya Vs. The Secretary to Government***, [2007 (2) MWN (Cr.) 145], a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu/detenu would be sufficient to set aside the detention order. In ***Tara Chand 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.

8. 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 13 working days and when the respondents have not given any valid reasons explaining the delay of thirteen days, the impugned detention order is liable to be quashed.

9. With regard to the non-furnishing of arrest intimation, this Court, in ***H.C.P. (MD) No.26 of 2019*** in the matter of ***Natarajan v. State of Tamil Nadu, rep. by The Principal Secretary to Government and two others***, on 07.06.2019, in which one of us (B.PUGALENDHI, J) was a party, has held as follows:

"8.As rightly pointed out by the learned counsel appearing for the petitioner, perusal of page No.20 of the booklet would disclose that though the arrest intimation was given to his wife/Kavitha through mobile No.8012668200, neither the text of the intimation given nor the signature of the person, has been found place, hence the same is in violation of ***D.K. Basu v. State of West Bengal*** reported in ***AIR (1997) SC 610*** and hence, on the sole ground, the impugned order of detention is liable to be quashed."

10. In the present case also, neither the remand order nor extension of the remand order have been furnished to the family members of the detenu, which vitiates the order of detention.



Therefore, on the ground of delay in considering the representation and also on the ground of non-furnishing the copy of remand order and the extension of remand order, the detention order passed by the second respondent is liable to be quashed.

11. 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 & District Magistrate, Pudukkottai District, in P.D.O.No.24 of 2019 on 29.07.2019. Consequently, the detenu, namely, Suresh, son of Thangaraj, aged about 30 years, who is now detained at Central Prison, Trichy, 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 (AD-II)

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Sub Assistant Registrar(CS)

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To

1. The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George, Chennai - 600 009.
2. The District Collector & District Magistrate,
Pudukkottai District, Pudukkottai.
3. The Superintendent of Police,
Central Prison, Trichy.
4. The Joint Secretary to the Government,
Public (Law and Order)
Fort St. George, Chennai - 600 009
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D.RAMESHKUMAR, Advocate (SR-4611[F] dated 04/02/2020)

H.C.P. (MD) No.850 of 2019

03.02.2020

JMN(05.03.2020) 4P : 7C