



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2020

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

H.C.P. (MD) No.880 of 2019

Yoganayagi ... Petitioner / Sister of Detenue
Vs.

- 1.The Additional Chief Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
- 2.The District Magistrate and District Collector
Karur District, Karur.
- 3.The Superintendent of Prison,
Central Prison, Tiruchirappalli. ... 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 pertaining to the impugned detention order passed by the second respondent made in his proceedings in Cr.M.P.No.10 of 2019, dated 10.08.2019 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu, namely, Jayakandhan S/o.Samikkannu, aged about 23 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

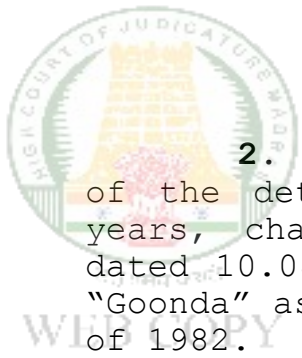
For Petitioner : Mr.K.M.Karunakaran
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

Heard Mr.K.M.Karunakaran, learned counsel for the petitioner and Mr.V.Neelakandan, learned Additional Public Prosecutor for the respondents and perused the materials available on record.

<https://hcs.courts.gov.in/hcs/ncs/>



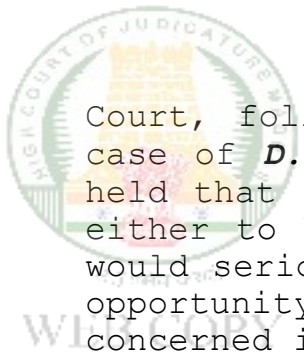
2. This habeas corpus petition has been filed by the sister of the detenu, namely, Jayakandhan S/o.Samikkannu, aged about 23 years, challenging the detention order in Cr.M.P.No.10 of 2019, dated 10.08.2019, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

3. The learned counsel for the petitioner submitted that the impugned detention is liable to be set aside on the ground of failure to intimate the arrest of the detenu either to his family members or his relatives. In this regard, the learned counsel has placed reliance upon the decision of the Honourable Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**.

4. It is also argued that admittedly, no bail petition was filed by the detenu in the ground case, but, the Detaining Authority, to arrive at the subjective satisfaction, in Paragraph No.5 of the detention order, has stated that in a similar case, registered at Kulithalai Police Station Crime No.12 of 2010, bail was granted by the learned Principal District and Sessions Judge, Karur, to one Pitchai, by order dated 22.03.2019 in Cr.M.P.No.364 of 2019. It is the submission of the learned counsel for the petitioner that when no bail petition has been filed by the detenu in the ground case, the subjective satisfaction reached by the Detaining Authority is without any basis and there is no imminent possibility of the detenu coming out on bail by filing bail petition before the appropriate Court in the ground case. In this regard, the learned counsel has placed reliance upon the decision of the Honourable Apex Court in the case of **Rekha vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244**.

5. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, while reiterating the averments in the counter affidavit filed by the second respondent, submitted that the detention order has been passed by the Detaining Authority after scrutinizing the relevant materials produced by the Sponsoring Authority and there is no illegality or infirmity in the detention order. Furthermore, the intimation of arrest of the detenu has been properly intimated in accordance with law and hence, the rights of the detenu has not been affected in any manner and hence, prayed for dismissal of the Habeas Corpus Petition.

6. A perusal of the arrest intimation form available at Page Nos.67 and 68 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell No.8098020634. However, there is no material to show that the said Cell Number belongs to the family members of the detenu or his relatives and the text of the message is also not found place in the booklet. This



Court, following the decision of the Honourable Apex Court in the case of **D.K. Basu** (cited supra), in several cases, has consistently held that if there is no proper intimation of arrest of the detenu either to his family members or his relatives, his valuable rights would seriously be prejudiced on the sense that they will not have the opportunity to make effective representation to the Authority concerned in time for revocation of the detention order.

7. Furthermore, in Paragraph No.5 of the detention order, the Detaining Authority has stated that the detenu has not filed any bail petition in the ground case. However, the Detaining Authority has stated that in a similar case registered at Kulithalai Police Station Crime No.12 of 2010, one Pitchai was granted bail by the learned Principal District and Sessions Judge, Karur, by order dated 22.03.2019 in Cr.M.P.No.364 of 2019. When there is no bail petition pending in the ground case, there is absolutely no imminent possibility of the detenu coming out on bail.

8. The Honourable Apex Court in the case of **Rekha vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244** has held as follows:

"7. A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that "in similar cases bails were granted by the courts". In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order.

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27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands



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on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.

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36. It has been held that the history of liberty is the history of procedural safeguards. (See *Kameleshkumar Ishwardas Patel v. Union of India* [(1995) 4 SCC 51 : 1995 SCC (Cri) 643] vide para 49.) These procedural safeguards are required to be zealously watched and enforced by the court and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu. As observed in *Rattan Singh v. State of Punjab* [(1981) 4 SCC 481 : 1981 SCC (Cri) 853]: (SCC p.483, para 4)

"4. ... May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic set up, it is essential that at least those safeguards are not denied to the detenus."

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...

39. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of judicial vigilance that is needed was aptly described in the following words in *Thomas Pelham Dale case* : [(1881) 6 QBD 376 (CA)] (QBD p.461)

"Then comes the question upon the habeas corpus. It is a general rule, which has always



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been acted upon by the courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue."

9. Keeping in mind the principles laid down by the Hon'ble Apex Court, we are convinced that the detention order impugned in this habeas corpus petition has been passed without any iota of material and it shows non-application of mind on the part of the Detaining Authority while passing the detention order and hence, the impugned detention order is liable to be set aside.

10. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in Cr.M.P.No.10 of 2019, dated 10.08.2019, is set aside. Consequently, the detenu, namely, Jayakandhan S/o.Samikkannu, aged about 23 years, who is now detained at Central Prison, Tiruchirappalli, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To:

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

2.The District Magistrate and District Collector
Karur District, Karur.

<https://hcservices.ecourts.gov.in/hcservices/>



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

4.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George,
Chennai - 09.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.880 of 2019
05.08.2020

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