



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD)No.906 of 2019

WEB COPY

T.Kasthuri

... Petitioner

Vs.

1.State of Tamil Nadu, rep. by

The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Ariyalur District, Ariyalur.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to call for the entire records in detention order passed in Cr.M.P.No.09/2019 dated 28.06.2019 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Dhanaraj, S/o. Thangaiyan, male, aged 30 years, who is detained in Central Prison, Tiruchirappalli before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

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

ORDER

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

The petitioner is the wife of the detenu and challenging the legality of the impugned order of detention dated 28.06.2019, passed by the second respondent, under Section 3(1) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral



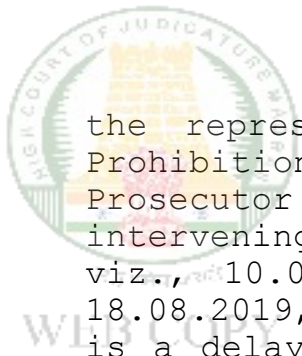
Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982, (Tamil Nadu Act 14 of 1982) and branding him as 'Sexual Offender' in Cr.M.P.No.09/2019, came forward to file the present Habeas Corpus Petition.

2.A perusal of the Grounds of Detention dated 28.06.2019, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Dhanaraj came to the adverse notice of a solitary case for the commission of offences under Sections 363, 366, 376, 354(A) and 506(ii) I.P.C. in Jayankondam All Women Police Station Crime No.08 of 2019 (ground case). The detenu was arrested on 15.06.2019 and produced before the Court of Judicial Magistrate No.II, Jayankondam. 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 and Public Health, clamped the order of detention and making a challenge to the same, the present Habeas Corpus Petition has been filed by the petitioner.

3.We have heard Mr.K.A.S.Prabhu, learned counsel appearing for the petitioner and Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

4.Though several grounds have been raised in the Habeas Corpus Petition, learned counsel for the petitioner would mainly focus his argument on two grounds. Firstly, it was contended heavily that there is huge delay in considering the representations dated 03.07.2019 and 06.08.2019 and as per the law laid down by the Hon'ble Apex Court in **Tara Chand Vs. State of Rajasthan and others, [1980 (2) SCC 321]**, any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. Secondly, the detaining authority cannot arrive at a subjective satisfaction that there is no real possibility of the detenu coming out on bail when the detenu has not moved any bail application and the similar case cited by the detaining authority is not similar to that of the ground case. Therefore, the impugned order of detention is liable to be set aside.

5.Regarding the first ground, the Detention Order was passed on 28.06.2019. As against the same, representations dated 03.07.2019 and 06.08.2019 were made and both the representations were received on 07.08.2019. The remarks were called for by the Government from the Detaining Authority on 07.08.2019. The remarks were received on 26.08.2019. Though the Under Secretary and Deputy Secretary to Government dealt with the same on 26.08.2019, the Hon'ble Minister for Electricity and Prohibition and Excise dealt with the same only on 19.09.2019 and the rejection letter was sent to detenu on 24.09.2019. It is the contention of the petitioner that there was delay of 23 days in sending the remarks and 24 days in considering



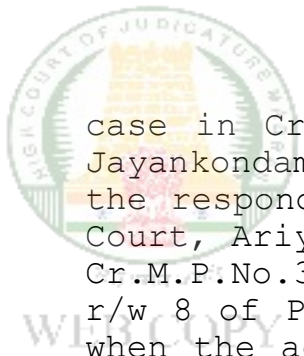
the representation by the Hon'ble Minister for Electricity and Prohibition and Excise. According to the learned Additional Public Prosecutor appearing for the respondents, there has been nine intervening holidays between the period 07.08.2019 and 26.08.2019 viz., 10.08.2019, 11.08.2019, 12.08.2019, 15.08.2019, 17.08.2019, 18.08.2019, 23.08.2019, 24.08.2019 and 25.08.2019. Even then, there is a delay of 14 days in sending the representation and there has been eight intervening holidays between the period 26.08.2019 and 19.09.2019 viz., 31.08.2019, 01.09.2019, 02.09.2019, 07.09.2019, 08.09.2019, 10.09.2019, 14.09.2019, 15.09.2019 and 21.09.2019. Even then, there is a delay of 16 days in considering the representation.

6. In similar occasion the Apex Court 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 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.

7. Again in ***Tara Chand Vs. State of Rajasthan and others, [1980 (2) SCC 321]***, the Hon'ble Apex 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. 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 14 working days in sending the remarks and 16 working days in considering the representation and therefore, the impugned detention order stands vitiated in the light of mandatory condition mentioned in Articles 22(5) of the Constitution of India, wherein it is held that the authority making the order shall, as soon as 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 the 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 representations. Therefore, right to consider his representation has been denied. On this score, the impugned order is liable to be quashed.

9. As regards the second ground, the detenu has not filed any bail application, but the detaining authority without any material has arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail by referring a similar



case in Crime No.03/2014 on the file of All Women Police Station, Jayankondam. The learned Additional Public Prosecutor appearing for the respondents argued that in the said case, the Fast Track Mahila Court, Ariyalur granted bail to the accused therein on 15.03.2014 in Cr.M.P.No.38 of 2014 for the commission of offence under Section 7 r/w 8 of Protection of Children from Sexual Offences Act, 2012 and when the accused therein was able to get bail for an offence under POCSO Act, it is easy for the detenu herein to get bail for the offences under Sections 363, 366, 376, 354(A) and 506(ii) I.P.C. from the concerned Court and that shows that the detaining authority has rightly arrived at the subjective satisfaction. However, the order of the Fast Track Mahila Court, Ariyalur granting bail to the accused therein in Cr.M.P.No.38 of 2014 shows that the accused therein was a senior citizen, aged about 65 years and he was also in custody for 21 days. Considering the above circumstances, bail was granted by the Fast Track Mahila Court on 15.03.2014, whereas in the present case the victim was aged about 48 years and the detenu was aged about 30 as on the date of detention. Therefore, accused released in that case on bail had no concern with the present case, more so, merely, because somebody else in similar case had been granted bail, there could be no presumption, as arrived at by the second respondent in the instant case, had the detenu applied for bail, he could be released on bail. Therefore, the impugned detention order based on mere *ipse dixit* statement in the grounds of detention cannot be sustained in the eyes of law. Hence, the subjective satisfaction arrived by the detaining authority that there is real possibility of the detenu coming out on bail is vitiated and on this ground also the impugned order of detention is liable to be set aside.

10.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 and District Magistrate, Ariyalur District in Cr.M.P.No.09/2019 dated 28.06.2019. Consequently, the detenu, namely, Dhanaraj, son of Thangaiyan, aged about 30 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/proceedings.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)



To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Secretariat, Chennai - 9.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Ariyalur District, Ariyalur.
- 3.The Superintendent,
Central Prison, Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort Saint George, Chennai - 09.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P(MD)No.906 of 2019
20.01.2020

sj

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