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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.02.2020**

CORAM:

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

AND

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

H.C.P. (MD)No.959 of 2019

Ameenammal, S/o.Abdul Kalam

.. Petitioner

Vs.

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

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

3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the second respondent in P.D.O.No.34/2019, dated 06.08.2019, quash the same and direct the respondents to produce the body or person of the detenu, by name Rahman @ Abdul Rahman, aged about 24 years, son of Abdul Kalam, now detained as 'Goonda' in Trichy Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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

O R D E R

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

This Habeas Corpus Petition has been filed challenging the correctness of the impugned detention order passed by the second respondent/District Magistrate and District Collector, Pudukkottai



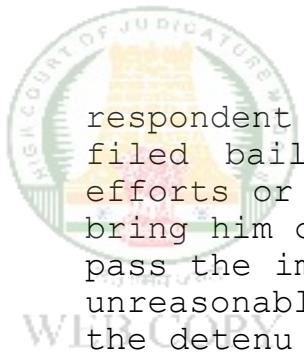
District, in P.D.O.No.34/2019, dated 06.08.2019, branding the petitioner's son viz., Rahman @ Abdul Rahman, S/o.Abdul Kalam, as 'Goonda'.

2.A perusal of the Grounds of Detention dated 06.08.2019, passed by the second respondent herein, would disclose among other things that the detenu viz., Rahman @ Abdul Rahman came to the adverse notice in the following cases:-

Sl No	Name of the Police Station and Crime No.	Section of Law
1.	Alangudi Police Station Crime No.56/2016	U/s. 294(b), 324 and 506 (ii) IPC
2.	Alangudi Police Station Crime No.412/2016	U/s. 294(b), 324 and 506 (ii) IPC @ 294(b), 323 and 506(ii) IPC
3.	Alangudi Police Station Crime No.123/2018	U/s. 294(b) and 506(ii) IPC
4.	Alangudi Police Station Crime No.124/2018	224 IPC
5.	Alangudi Police Station Crime No.118/2019	147, 148, 341, 294(b), 324, 506(ii) and 307 IPC

It is further stated in the grounds of detention that the detenu was involved in a case for the commission of offence under Sections 294 (b) and 392 IPC r/w. Sections 397 and 506(ii) IPC, r/w. Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, in Alangudi Police Station Crime No.122 of 2019 (ground case). The detenu was arrested on 16.07.2019 and produced before the learned Judicial Magistrate, Alangudi. 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 peace and 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.Mr.R.Alagumani, learned counsel appearing for the petitioner assailing the legality of the impugned detention order, pressed into service several points viz., when the detenu was arrested in the ground case on 16.07.2019 and the second respondent has passed the impugned detention order on 06.08.2019, there is no acceptable reason or ground mentioned in the impugned detention order to detain the detenu under the Tamil Nadu Act 14 of 1982. Firstly, in Paragraph No.5 of the grounds of detention, when the second



respondent has come to the conclusion that the detenu has not even filed bail petition, it goes without saying that there are no efforts or steps taken either by the detenu or his family members to bring him out on bail, there are no circumstances warranting him to pass the impugned detention order against the detenu entertaining an unreasonable apprehension in his mind that there is a possibility of the detenu coming out on bail. Therefore, the reasoning given in the impugned detention order that recourse to the normal criminal law will not have the desired effect of effectively preventing the detenu from indulging in such activities, which are prejudicial to the maintenance of Public Peace and Public Order, is not only arbitrary, but also unjustifiable. Secondly, no particulars about the filing of similar bail petition have been given, which shows that there are remote chances for the detenu to move bail petition and coming out on bail.

4.Adding further, the learned counsel appearing for the petitioner would submit that when the detenu was arrested in the ground case and in the fifth adverse case, no bail application has been filed. Immediately, the petitioner submitted representations dated 19.09.2019 and 17.09.2019 and the same were received on 20.09.2019 and 23.09.2019. Thereafter, remarks were called for on 20.09.2019 and 23.09.2019. The remarks were duly received on 25.10.2019 and the file was submitted to the Government on 28.10.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 27.11.2019 and the rejection letter was prepared on 29.11.2019 and the same was served on the detenu on 02.12.2019. Between 29.10.2019 and 27.11.2019, there has been a huge delay of 29 days in considering the representations. Therefore, according to learned counsel appearing for the petitioner, on the ground of delay, the impugned order stands vitiated and the present petition deserves to be allowed and a direction may be issued to the respondents to release the detenu.

5.Learned Additional Public Prosecutor appearing for the respondents has produced a Proforma and submitted that the petitioner has sent two representations on 19.09.2019 and 17.09.2019 and the same were received on 20.09.2019 and 23.09.2019 and remarks were called for on 20.09.2019 and 23.09.2019. Thereafter, remarks were received on 25.10.2019 and the same were submitted to the Government on 28.10.2019 and were pending with the Government till 27.11.2019 and thereafter, the same were rejected. Between 29.10.2019 and 27.11.2019, there are 8 intervening Government Holidays. Thus, there has been an actual delay of 21 days, which is not as complained by the learned counsel appearing for the petitioner as '29' days. Though there was a delay in considering the representations, on that score, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, violation of the fundamental rights guaranteed under



Articles 21 and 22 of the Constitution of India.

6. In support of his contention, the learned counsel appearing for the petitioner has relied on the decision of this Court in ***Sumaiya Vs. The Secretary to Government*** reported in **2007 (2) MWN (Cri.) 145 (DB)**, to state that even a delay of three days in considering the representation is fatal to the detention order passed by the Detaining Authority concerned. He had further submitted that the unexplained delay caused in considering the representation would vitiate the detention order passed by the Detaining Authority.

7. The learned counsel has also relied upon a decision in ***Venkatesan @ Maya Venkatesan (2007 (1) MLJ (Crl.) 1176)***, it has been held as follows:-

'10. thus it is clear that the Government is bound to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. The test is not the duration or range of delay, but how it is explained by the Authority concerned. In this case, as pointed out above, there is absolutely no explanation for the delay of four days. It is a constitutional obligation to consider the representation forwarded by the detenu without any delay, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Hence, on this ground also the order of detention is liable to be quashed.'

8. In ***Kalaiselvi.G. Vs. The State of Tamil Nadu (2007 (5) CTC 657)***, a Full Bench of this Court had held as follows:

'26. The last contention is relating to delay in disposal of the representation. It is by now well recognised that the authorities concerned are duty bound to afford to the detenu an opportunity of making representation and such right of the detenu obviously encompasses the corresponding duty that the representation must receive careful and expeditious attention and should be disposed of without any unnecessary delay and the result of such representation should also be communicated without unnecessary delay. This position is apparent from several decisions of the Supreme Court, including the decision *Usha Agarwal vs. Union of India and others* (2007 (1) SCC 295), wherein, after referring to the Constitution Bench decision of the Supreme Court in *Kamleshkumar Ishwandas Patel vs. Union of India*, (1995) 4 SCC 51, it was observed:



This Court has also repeatedly held that though there can be no specific or mechanical test for determining whether there has been undue delay, where there is an unexplained delay in either making the order or serving the order, it would vitiate the order of detention.'

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9.In ***Rekha Vs. State of Tamil Nadu (2011 (5) SCC 244)***, it has been held that the personal liberty of a person is protected, under Article 21 of the Constitution of India. As it is so sacrosanct and so high in the scale of constitutional values, there is an obligation on the part of the Detaining Authority to show that, while passing the impugned order of detention, the procedures established by law have been meticulously followed. 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.In the present case, the delay caused in the disposal of the representations, dated 19.09.2019 and 17.09.2019, made on behalf of the detenu, has not been properly explained by the respondents, either in the counter affidavit filed on their behalf or in the oral submissions made by the learned Additional Public Prosecutor appearing on behalf of the respondents. In such circumstances, in view of the decisions cited supra, this Court is of the view that there is no proper justification on the part of the respondents for causing 21 days delay. As the delay has not been sufficiently explained, we hold that the action of the respondents violates Article 22(5) of the Constitution of India. In view of the above facts and circumstances of the case, we have no other option except to allow this petition.

11.Accordingly, this petition is allowed. Consequently, the impugned detention order passed by the second respondent in P.D.O.No.34/2019, dated 06.08.2019, is set aside and the detenu Rahman @ Abdul Rahman, aged about 24 years, S/o.Abdul Kalam, now detained in Central Prison, Trichy, is set at liberty. The Superintendent of Central Prison, Trichy/third respondent is directed to release the detenu forthwith, unless his presence is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (Writs)

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Sub Assistant Registrar(CS)

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To

1.The Additional Chief Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

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

3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.

4.The Joint Secretary to Government,
Public (Law and Order)
Fort St. George, Chennai - 9

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

**H.C.P. (MD) No. 959 of 2019
20.02.2020**

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