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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **22.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD)No.995 of 2019

Nirmala Mercy, W/o.Hendry Pushparaj ... Petitioner

Vs.

1.The State Rep. by
The Addl. Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The District Collector and District Magistrate,
Collectorate Office,
Trichy District.

3.The Superintendent,
Central Prison, Trichy.

4.The Inspector of Police,
Samayapuram Police Station,
Trichy District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for records in Cr.M.P.No.51/2019, dated 06.09.2019 and direct the respondents herein to produce the detenu Hendry Pushparaj, S/o.Stephen Albert, aged 26 years, who has been termed as 'Sand Offender' and now confined in Central Prison, Trichy and set aside the same and set the detenu at liberty.

For Petitioner	: Mr.T.Senthil Kumar
For Respondents	: Mr.K.Dinesh Babu
	Additional Public Prosecutor

ORDER

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

Nirmala Mercy, wife of the detenu, viz., Hendry Pushparaj, S/o.Stephen Albert, aged about 26 years, who has been termed as 'Sand Offender', has preferred this Habeas Corpus Petition to quash the impugned detention order passed by the second respondent, dated 06.09.2019.



2.Learned counsel appearing for the petitioner assailed the impugned detention order on the sole ground that the detenu was arrested on 18.08.2019 for carrying river sand and remanded to judicial custody on the same date and subsequently, the remand order got extended on 30.08.2019 till 13.09.2019 and thereafter, the impugned detention order has been passed on 06.09.2019, whereas the copy of the extension of the remand order has not been furnished, in spite of a specific request made by the petitioner. Hence, according to the learned counsel, non-furnishing of the orders of extension of remand to the detenu, is a clear violation and the same vitiates the impugned detention order.

3.The learned counsel, strongly relying on the judgment of the Full Bench of this Court reported in **(2007) 2 MLJ (Cr1.) 1841** in the case of **G.Kalaiselvi Vs. State of Tamil Nadu, rep. by Secretary to Government of Tamil Nadu, Home and Prohibition and Excise Department, Chennai-09**, invited our notice to Paragraph No.27 of the said judgment, which holds that if a request has been made for furnishing a copy of the remand order and the same has not been complied with, moreover, no apparent reason is given, it clearly shows that the order of remand has been completely vitiated. Furthermore, as settled by this Court in the case of **Pawmmal Vs. State of Tamil Nadu and another**, reported in **(1999) SCC (Cr1.) 231**, it is the duty of the appropriate authority to furnish such copy or at least indicate the reason why such copy is not supplied to the detenu in spite of specific request by the detenu. As already indicated, where a document asked for is on the face of it irrelevant, non-furnishing of such document is immaterial. Where, however, the document has got some relevance, refusal to supply such copy, in spite of specific request, without any valid reason, may have the effect of vitiating the order of detention as the detenu is likely to be prejudiced, inasmuch as he would not be in a position to make an effective representation.

4.Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents is unable to give any answer before us whether the second remand extension has been made and the copy of the same has been furnished. It is, therefore, necessary to extract the relevant portion of the Full Bench decision cited above and the same reads as follows:-

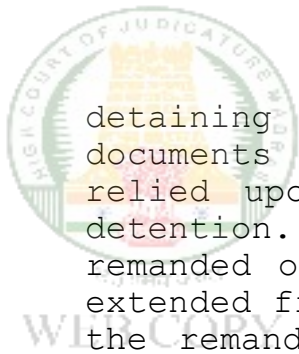
'21.Law is well settled that the detaining authority is required to give copies of the relied upon documents along with grounds of detention and non-furnishing of relied upon document has the effect of vitiating the order of detention. See **Pawmmal Vs. State of Tamil Nadu and another**, reported in **(1999) SCC (Cr1.) 231**. Where, however, a document is not relied upon, yet the detenu asks for copy of such document, which is either referred



to or has got some bearing, it is the duty of the appropriate authority to furnish such copy or at least indicate the reason why such copy is not supplied to the detenu inspite of specific request by the detenu. As already indicated, where a document asked for is on the face of it irrelevant, non-furnishing of such document is immaterial. Where, however, the document has got some relevance, refusal to supply such copy, inspite of specific request, without any valid reason, may have the effect of vitiating the order of detention as the detenu is likely to be prejudiced, inasmuch as he would not be in a position to make an effective representation.

27. In the above background, it is to be seen as to whether the representation of the detenu has received careful attention and whether the result of such consideration of representation has been communicated without avoidable delay. It has been already noticed that in the representation, a request had been made for furnishing copy of the remand order dated 30.03.2007, which was not complied with and no apparent reason has been given. We have already held that this had vitiated the order of detention. It is found from the chart furnished by the learned Additional Public Prosecutor that such representation dated 22.04.2007 was disposed of by the Minister on 09.05.2007 and the rejection letter prepared on 09.05.2007 was sent to the detenu on 11.05.2007. So far so good. It cannot be said that there had been any undue delay at that stage. However, it is further found that the rejection letter was served on the detenu only on 21.05.2007, after a lapse of about 10 days. It is no doubt true that the result must have been communicated through post. But, in the absence of any explanation, it cannot be assumed that such undue delay was on account of the postal delay. When the detention order has been challenged on the ground of delay in disposal of the representation, it was the duty of the respondent to bring on record all the factors explaining that there had been no remissness at any stage. In our considered opinion, the delay in communicating the result of the representation, in the peculiar facts and circumstances of the present case, has also such effect of vitiating the order of detention.'

5. The Honourable Full Bench of this Court, while dealing with <https://hcservices.e-courts.gov.in/hcservices/>, has held that law is well settled that the



detaining authority is required to give copies of the relied upon documents along with grounds of detention and non-furnishing of relied upon documents has the effect of vitiating the order of detention. In the present case, admittedly, when the detenu was remanded on 18.08.2019 and subsequently, the said remand order was extended from 30.08.2019 till 13.09.2019, there is no answer whether the remand was extended on 30.08.2019 and the same has not been furnished till the date of passing of the impugned detention order. Therefore, following the decision of our Full Bench of this Court mentioned supra, we have no other option except to allow the present habeas corpus petition.

6.Resultantly, this 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, Trichy District, in Cr.M.P.No.51/2019, dated 06.09.2019. Consequently, the detenu, namely, Hendry Pushparaj, son of Stephen Albert, aged about 26 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 (CS-III)

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Sub Assistant Registrar(CS)

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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The District Collector and District Magistrate,
Collectorate Office,
Trichy District.
- 3.The Superintendent,
Central Prison, Trichy.
- 4.The Inspector of Police,
Samayapuram Police Station,
Trichy District.



5. The Joint Secretary to Government,
Public(Law&ORder),
Fort st. George, Chennai 9

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

H.C.P. (MD) No.995 of 2019
22.01.2020

MK (04.03.2020) 5P 7C