



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.1005 of 2019

Sami @ Saminathan

... Petitioner

Vs.

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

2.The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Thoothukudi District,
Thoothukudi.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli 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 2nd respondent in H.S.(MD) Confdl.No.44/2019 dated 30.08.2019 and quash the same and direct the respondents to produce the body or person of the detenu, by name Sami @ Saminathan, S/o.Somasundaram, aged about 35 years, (now confined at Central Prison, Palayamkottai) before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

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

Sami @ Saminathan, S/o.Somasundaram, aged about 35 years, assailing the correctness of the impugned order of detention dated 30.08.2019, passed by the second respondent/District Collector and District Magistrate, Thoothukudi District, detaining him at the Central Prison, Palayamkottai, has come to this Court.



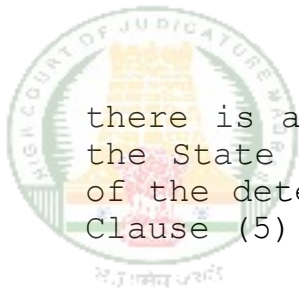
2.Learned counsel appearing for the petitioner submitted that when there was a ground case registered in Kalugumalai Police Station in Cr.No.130/2019 for the offence punishable under Section 302 I.P.C, the petitioner/detenu was arrested on 05.08.2019. Not being satisfied with the arrest of the petitioner, the second respondent without even cross-check, whether the detenu has suffered any bad antecedent, wrongly, invoking of Act 14 of 1982, erroneously, branding the petitioner as 'Goonda' under Section 2(f) of the Tamil Nadu Act, 1982, passed the impugned detention order, which does not call for detaining the petitioner as 'Goonda'.

3.It is further pleaded by the learned counsel appearing for the petitioner that when the Detaining Authority in paragraph No.7 of the impugned order has mentioned about the similar case registered in Kovilpatti East Police Station in Cr.No.332/2016 under Sections 294(b), 302 and 506(ii) I.P.C, wherein, bail was granted to accused Kanagaraj by this Court vide CrI.O.P.(MD). No.23893/2016, the said case cannot be equated with the case of the petitioner for the simple reason that Kalugumalai Police Station has registered the case against the petitioner in Cr.No.130/2019 only for the offence under Section 302 I.P.C, whereas the similar case registered by the Kovilpatti East Police Station is under Sections 294(b), 302 and 506(ii) I.P.C. In support of his submission, he has submitted that the similar case bail order dated 23.12.2016 has been furnished with illegible copies, wherein, even one word or even one sentence cannot be read by any one including the respondent.

4.Heard the learned counsel appearing for the parties and perused the materials available on record.

5.On a perusal of the booklet, it is seen that pages 147 and 149, relating to the similar case bail order could not be looked out. It is fully unreadable. Although on this ground, the impugned detention order is liable to be quashed, taking into account, yet another vital reason that the representation dated 23.09.2019 given to the respondents, even after lapse of 5 long months, has not seen the light of the day for the reason that it is the admitted case of the respondent that the rejection order was prepared and it was not sent to the detenu in jail, we are of the view that on the sole ground of non-consideration of the representation only, the impugned order is liable to be quashed.

6.In fact, this Court, in its order, dated 9.11.2011, in ***Smt.Sowdun Bivi Vs. The State of Tamilnadu (H.C.P.No.108 of 2011)***, has clarified the position relating to the issue regarding the consideration of the representation made on behalf of the detenu, referring to the Full Bench decision of this Court, in ***Rajammal Vs. State of Tamil Nadu and another (1999 AIR SCW 139)***. Thus, it is clear, from the catena of cases decided by the Supreme Court, that



there is an obligation cast on the Detaining Authority, as well as the State Government, to consider the representation made on behalf of the detenu, as early as possible, as per the mandate enshrined in Clause (5) of Article 22 of the Constitution of India.

7. Further, in ***Rashid sk. v. State of West Bengal***, reported in, **1973 (3) SCC 476**, the Honourable Supreme Court has held that the right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty - the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.

8. As we highlighted above, even though the petitioner/detenu has made a representation dated 23.09.2019 and it was also received by the respondents, till date, no final order has been passed and the counter affidavit also does not whisper about the disposal of the representation. Therefore, for inordinate and unexplained delay on the part of the Government in not considering the representation renders the detention order illegal.

9. Resultantly, this petition stands allowed and the impugned detention order stands quashed. Consequently, the detenu, Sami @ Saminathan, S/o.Somasundaram, aged about 35 years, who is now detained at Palayamkottai Central Prison 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

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vs

To

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

2.The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Thoothukudi District,
Thoothukudi.



- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
4. The Joint Secretary to Government,
Public(Law&Order) ,
Fort st. George,
Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1005 of 2019
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