



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.02.2020**

CORAM:

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

AND

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

H.C.P. (MD)No.1022 of 2019

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Manikandan

: Petitioner

Vs

1.The Principal Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-09.

2.The District Collector & District Magistrate,
O/o.The District Collector & District Magistrate
Nagapattinam District
Nagapattinam.

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 respondent No.2 in C.O.C.No.42/2019 dated 17.09.2019 and quash the same and direct the respondents to produce the body or person of the detenu namely Manikandan, S/o.Muthukrishnan, aged 21 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner
For Respondents

: Mr.R.Alagumani
: Mr.K.Dinesh Babu
Addl.Public Prosecutor

O R D E R

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

The detenu viz., Manikandan, S/o.Muthukrishnan, aged 21 years, who is detained in Central Prison, Tiruchirappalli, has filed this petition, challenging the legality of the impugned detention order passed by the second respondent in



C.O.C.No.42/2019 dated 17.09.2019.

2.Mr.R.Alagumani, learned counsel appearing for the petitioner placed before us two fold submissions. Firstly, it was pleaded that when the detenu suffered a solitary case in Cr.No.167/2019, registered by the Vedaranyam Police Station for the offences punishable under Sections 147, 148, 120(b), 341, 435, 153(A), 504, 505 (i) (b) and 307 I.P.C and Section 3 (1) of Tamil Nadu Property (Prevention of Damage and Loss), Act, 1992 (amended 1994), an F.I.R was also submitted to the Inspector of Police, Thalanayaru, who was holding in-charge of the post of Inspector of Police, Vedaranyam. He was subsequently arrested on 30.08.2019. Secondly, when the detenu has not even filed a bail application, the Detaining Authority wrongly inferring that his mother Thirumathi Malarkodi is taking steps to move bail application in the ground case in Cr.No.167/2019 before the appropriate Court, has arrived at a subjective satisfaction that there is a real possibility of his coming out on bail in the aforesaid case. The Detaining Authority further inferred that "if he comes out on bail, he will indulge in such further activities, which will be prejudicial to the maintenance of public order and public peace". Further holding that recourse to normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities which are prejudicial to the maintenance of public order and public peace, the Detaining Authority has wrongly passed the impugned detention order. It clearly indicates the non-application of mind on the part of the Detaining Authority. Hence, he prays for quashment of the impugned order.

3.Mr.K.Dinesh Babu, learned Additional Public Prosecutor, appearing for the respondents, submitted that there is no fault on the part of the Detaining Authority in arriving at the subjective satisfaction that there is a real possibility of his coming out on bail by filing an application in the ground case, the reason being that the detenu's mother, viz., Malarkodi, on information, was taking steps to take out the detenu on bail by filing a bail application in the ground case in Cr.No.167/2019.

4.Continuing his arguments, the learned counsel appearing for the petitioner submitted that after passing the impugned detention order on 17.09.2019, as per Section 8(1) of the Tamil Nadu Act 14 of 1982, when a person is detained in pursuance of a detention order, the Authority making the detention order, shall as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government. But, in the present case, there has been 6 days delay, because when the detention order was passed on 17.09.2019, the booklet was



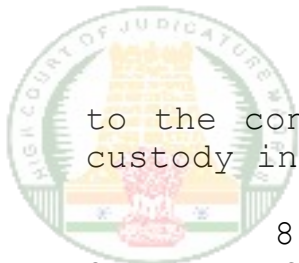
furnished to the detenu only on 23.09.2019. Since the impugned order, passed against the detenu, without furnishing the booklet containing all the requisite documents enabling the detenu or his family members to make suitable representation to the State Government to revoke the impugned detention order, is vitiated.

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5. Again, replying to the above submissions, the learned Additional Public Prosecutor, submitted that the said ground of delay taken by the petitioner is not true, the reason being that when the detention order was passed on 17.09.2019, booklet was furnished to the detenu on 23.09.2019 (since 21st September 2019 and 22nd September 2019 are Saturday and Sunday) , even before the expiry of five days fixed by Section 8 of the Act 14 of 1982, the booklets and other documents were furnished to the detenu. Thus, he prays for confirmation of the impugned detention order.

6. Considering the above submissions, we are of the view that Section 8 of the Act 14 of 1982, holds that when a person is detained in pursuance of a detention order, the information of the arrest should be intimated either to him or his family members along with the ground on which the order is passed, immediately, but not later than five days, so as to enable him to make a representation against the order to the State Government. But in the present case, when the detention order was passed on 17.09.2019, the entire booklet containing all the requisite documents was furnished to the detenu on 23.09.2019, ie beyond the stipulated period. Hence, moving to the first argument made by the learned counsel for the petitioner, we are of the view that there is no ground made by the Detaining Authority to invoke Act 14 of 1982. When the detenu was arrested on 13.08.2019, the impugned order of detention was passed on 17.09.2019. But from 13.08.2019 till 17.09.2019, as averred by the learned counsel appearing for the petitioner, no move has been made for filing any application before any Court. Therefore, the subjective satisfaction reached by the Detaining Authority that the detenu's mother Thirumathi.Malarkodi was taking steps to take him out by filing bail application in ground case in Cr.No.67/2019 deserves to be rejected.

7. In the light of the observation made by the Honourable Supreme Court in the case of **Huidrom Konungjao Singh Vs State of Manipur and Others**, reported in (2012) 3 MLJ (Cr1) 794, wherein, it is vividly held that the Detaining Authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be *ipse dixit* of the Detaining Authority. His subjective satisfaction based on materials, normally, should not be interfered with. But, in the present case, there is no foundation or basis available to the Detaining Authority to come



to the conclusion that the detenu is likely to be released from custody in the near future.

8.In view of the above ratio laid down by the Honourable Supreme Court of India, we are unable to find subjective satisfaction arrived at by the Detaining Authority. Hence, we are of the considered view that the impugned order fails and the same is liable to be quashed.

9.Accordingly, the impugned detention order passed by the second respondent in C.O.C.No.42/2019 dated 17.09.2019 is quashed. Consequently, this petition is allowed and the respondents are directed to release the detenu namely Manikandan, S/o.Muthukrishnan, aged 21 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty. The Superintendent of Central Prison, Tiruchirappalli/third respondent is directed to release him forthwith, unless his presence is required in connection with any other criminal proceedings.

Sd/-

Assistant Registrar (AD II)

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/ /2020

Sub Assistant Registrar(CS)

vs

To

1.The Principal Secretary to Government
State of TamilNadu
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-09.

2.The District Collector & District Magistrate,
O/o.The District Magistrate and District Collector,
Nagapattinam District
Nagapattinam.

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

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



4.The Joint Secretary to Government
Public(law and order)
Fort St. George,
Chennai-09.

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

H.C.P. (MD) No.1022 of 2019
06.02.2020

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