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H.C.P(MD)No.1021 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2020

CORAM

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

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.1021 of 2019

R.Valarmathi

... Petitioner

Vs.

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

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

3.The Superintendent of Prison,
Central Prison,
Madurai.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus calling for the entire records pertaining to the detention order passed by the 2nd Respondent in Detention Order No.34/2019 dated 18.06.2019 and set aside the same as illegal and direct the Respondents to produce the body or person of the Petitioner's son namely Anandhan, S/o. Rajendran, Male, aged 28 years, who is detained in Central Prison, Madurai before this Court and set him at liberty.

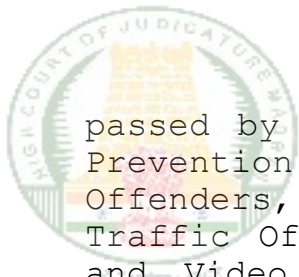
For Petitioner : Mr.R.Srinivasan

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

ORDER

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

The petitioner is the mother of the detenu and challenging the legality of the impugned order of detention dated 18.06.2019,
<https://hoseervices.ecourts.gov.in/hy services/>



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 'Goonda' in Detention Order No.34/2019, came forward to file the present Habeas Corpus Petition.

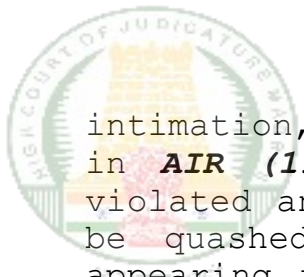
2.A perusal of the Grounds of Detention dated 18.06.2019, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Anandhan came to the adverse notice in the following case:-

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1.	Ammaiyanaickenur Police Station Cr.No.89 of 2019	U/s 302 r/w 397 and 506(ii) I.P.C.

It is further stated in the grounds of detention that the detenu was involved in a case for the commission of offences under Sections 147, 148, 294(b), 324, 302 and 506(ii) I.P.C. in Ammaiyaickenur Police Station Crime No.90 of 2019 (ground case). The detenu was arrested on 07.05.2019 and produced before the Court of Judicial Magistrate, Nilakottai and remanded to judicial custody on the same day. 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, 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.R.Srinivasan, 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 representation dated 15.07.2019 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. Therefore, the impugned order of detention is liable to be set aside. Secondly, the learned counsel appearing for the petitioner has drawn the attention of this Court to page Nos.30 to 32 of the booklet and would submit that after the arrest of the accused in adverse case in Crime No.89 of 2019, the arrest intimation was not communicated to the family members of the detenu and though the arrest intimation was said to have been communicated in person to one Petchi, the signature of the concerned person has not been



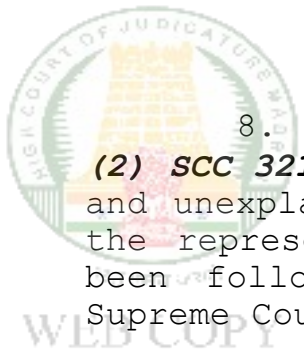
intimation, the guidelines given by the Hon'ble Apex Court reported in **AIR (1997) SC 610 [D.K. Basu v. State of West Bengal]** is violated and as such, the impugned order of detention is liable to be quashed. In support of his submission, the learned counsel appearing for the petitioner has relied on an unreported order of this Court **dated 07.06.2019** made in **H.C.P. (MD) No.26 of 2019** in the matter of **Natarajan v. State of Tamil Nadu, rep. by The Principal Secretary to Government and two others**, in which one of us (B.PUGALENDHI, J) was a party. The relevant portion of the order runs thus:

"8.As rightly pointed out by the learned counsel appearing for the petitioner, perusal of page No.20 of the booklet would disclose that though the arrest intimation was given to his wife/Kavitha through mobile No.8012668200, neither the text of the intimation given nor the signature of the person, has been found place, hence the same is in violation of **D.K. Basu v. State of West Bengal** reported in **AIR (1997) SC 610** and hence, on the sole ground, the impugned order of detention is liable to be quashed."

5.Regarding the first ground, the Detention Order was passed on 18.06.2019. As against the same, a representation was made on 15.07.2019 and the same was received on 26.07.2019. The remarks were called for by the Government from the Detaining Authority on 29.07.2019. The remarks were received on 02.08.2019. Though the Deputy Secretary to Government dealt with the same on 02.08.2019, the Hon'ble Minister for Electricity and Prohibition and Excise dealt with the same only on 14.08.2019 and the rejection letter was sent to detenu on 16.08.2019. It is the contention of the petitioner that there was delay of 12 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 five intervening holidays between the period 02.08.2019 and 14.08.2019 viz., 03.08.2019, 04.08.2019, 10.08.2019, 11.08.2019 and 12.08.2019. Even then, there is a delay of 7 days in considering the representation.

6.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 Hon'ble Supreme 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. In **Sumaiya Vs. The Secretary to Government, [2007 (2) MWN (Cr.) 145]**, a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu/detenu would be sufficient to set aside the detention order.



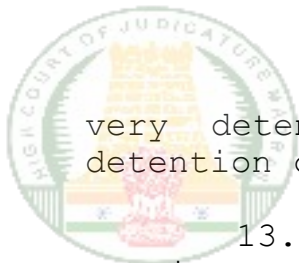
8. In **Tara Chand Vs. State of Rajasthan and others, [1980 (2) SCC 321]**, the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

9. 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 7 working days and therefore, the impugned detention order is liable to be quashed.

10. As regards the second ground, though we have heard the learned Additional Public Prosecutor appearing for the respondents, we are unable to find any explanation as to why the arrest intimation was not communicated to the family members of the detenu. Further, page Nos.30 to 32 of the booklet show neither the text of the intimation given nor the signature of the person, who is said to have been informed has been obtained. That clearly shows that the arrest intimation was not given to the family members of the detenu, hence, the non-communication of the arrest intimation violates the mandatory guidelines given by the Hon'ble Apex Court reported in **AIR (1997) SC 610 [D.K. Basu v. State of West Bengal]** and as such, the impugned order of detention is liable to be set aside.

11. The Hon'ble Apex Court in **Rekha v. State of T.N. reported in (2011) 5 SCC 244** has ruled that the preventive detention is, by nature repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). It may be mentioned herein that in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. When the detaining authority passes the order of detention on subjective satisfaction, as per clause (3) of Article 22 the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. Such article excludes the applicability of clauses (1) and (2). However, to prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is, in our opinion, mandatory and vital.

12. The exclusion of applicability of clauses (1) and (2) of Article 22 does not mean that the arrest of detenu should not be informed to his family members, which is *sine qua non*, therefore, the non-compliance would vitiate the very detention itself. Applying this ratio here, we hold that the non-compliance of the mandatory condition that the family members of the detenu should be informed of his arrest having not been done in this case, would vitiate the



very detention itself. Accordingly, on this sole ground, the detention order is liable to fall.

13. 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, Dindigul District in Detention Order No.34/2019 dated 18.06.2019. Consequently, the detenu, namely, Anandhan, son of Rajendran, aged about 28 years, who is now detained at Central Prison, Madurai 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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/ /2020

Sub Assistant Registrar(CS)

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
2. The District Magistrate and District Collector,
O/o. The District Collector and District Magistrate,
Dindigul District,
Dindigul.
3. The Superintendent of Prison,
Central Prison,
Madurai.
4. The Joint Secretary to Government (Law & Order)
Fort St. George, Chennai - 09.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P(MD)No.1021 of 2019

06.01.2020

sj

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