



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **13.02.2020**
CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD)No.1048 of 2019

Latha, W/o.Rajaram @ Raja

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department (XVI),
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.61/2019, dated 19.09.2019, quash the same and direct the respondents to produce the body or person of the detenu, by name Rajaram @ Raja, aged about 41 years, son of Posangu, 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

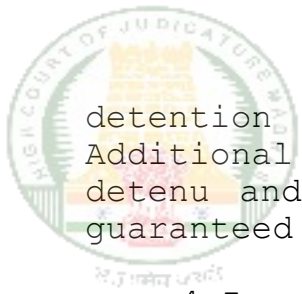
[Order of the Court was made by **T.RAJA, J.**]

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.61/2019, dated 19.06.2019, branding the petitioner's husband viz., Rajaram @ Raja, S/o.Posangu, as 'Goonda'.



2.Mr.R.Alagumani, learned counsel appearing for the petitioner assailing the impugned detention order, placed before us three fold submissions. Firstly, when the ground case was registered on 24.12.2018 against ten accused persons, the detenu, who was arrayed as A9 and one another accused alone were chosen to face the order of detention arbitrarily without any basis and justification. Secondly, when the second respondent in Paragraph No.5 of the grounds of detention, has specifically mentioned that the detenu has filed bail petition in the ground case before the learned Principal Sessions Judge, Pudukkottai, vide Cr.M.P.No.2305 of 2019 and the same was dismissed on 09.09.2019, 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. Hence, 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. The reason being, the bail application of the detenu, has been dismissed on 09.09.2019 and thereafter, no bail application has been filed on his behalf. Thirdly, the detention order was passed on 19.09.2019. The petitioner submitted three representations dated 30.09.2019 and the same were received on 09.10.2019, 10.10.2019 and 24.10.2019. Thereafter, remarks were called for on 09.10.2019, 10.10.2019 and 24.10.2019. The remarks were duly received on 08.11.2019 and the file was submitted to the Government on 09.11.2019. 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 09.11.2019 and 27.11.2019, there has been a huge delay of 17 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.

3.Learned Additional Public Prosecutor appearing for the respondents while meeting the delay point, has stated that the petitioner has sent three representations on 30.09.2019 and the same were received on 09.10.2019, 10.10.2019 and 24.10.2019 and remarks were called for on 09.10.2019, 10.10.2019 and 24.10.2019. Thereafter, remarks were received on 08.11.2019 and the same were submitted to the Government on 09.11.2019 and were pending with the Government till 27.11.2019 and thereafter, the same were rejected. Between 09.11.2019 and 27.11.2019, there are 5 intervening Government Holidays. Thus, there has been an actual delay of 12 days, which is not as complained by the learned counsel appearing for the petitioner as '17' days. Though there was a delay in representation, 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, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

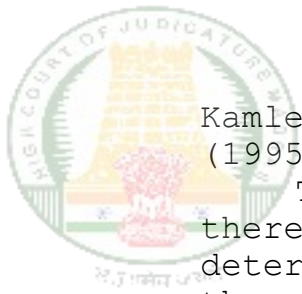
4. In support of his contention, the learned counsel appearing for the petitioner has relied on the decision of this Court in **Sumaiya Vs. The Secretary to Government** reported in **2007 (2) MWN (Cri.) 145 (DB)**, to state that even a delay of three days in considering the representation is fatal to 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.

5. 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.'

6. 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.''

7.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.

8.In the present case, the delay caused in the disposal of the representations, dated 30.09.2019, 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 12 long 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.

9.Accordingly, this petition is allowed. Consequently, the impugned detention order passed by the second respondent in P.D.O.No.61/2019, dated 19.09.2019, is set aside and the detenu Rajaram @ Raja, aged about 41 years, S/o.Posangu, 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 (records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



1.The Additional Chief Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department (XVI),
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Chennai - 600 009.

2.The District Magistrate and District Collector,
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Pudukkottai.

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

+1 CC to Mr.K.BAALASUNDARAM, Advocate (SR-6185[F] dated
13/02/2020)

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MK (13.03.2020) 5P 7C