



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.02.2020**

CORAM:

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

AND

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

H.C.P. (MD) No.1064 of 2019

Athimannan : Petitioner/father of the detenu

Vs

- 1.The Secretary to the Government
Home, Prohibition & Excise Department,
Secretariat,
Chennai-09.
 - 2.The District Magistrate and District Collector,
Theni District,
Theni.
 - 3.The Superintendent of Prison,
Central Prison,
Madurai.
- : Respondents

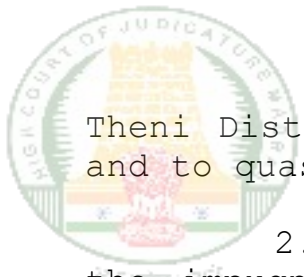
Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records, pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in Detention Order No.6/2019/C3 dated 11.07.2019 and quash the same and direct the respondents to produce the detenu namely Praveenkumar, S/o.Athimannan, aged about 20 years, who is detained in Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.Ramesh Kumar
for Mr.S.Manoj Immanuel
For Respondents : Mr.K.Dinesh Babu
Addl.Public Prosecutor

O R D E R

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

The father of the detenu namely Praveenkumar, S/o.Athimannan, aged about 20 years, who is detained in Central Prison, Madurai has filed this Habeas Corpus Petition, challenging the correctness of the impugned detention order passed by the second respondent/District Collector and District Magistrate,



Theni District, in Detention Order No.6/2019/C3 dated 11.07.2019 and to quash the same.

2.Learned counsel appearing for the petitioner, assailing the impugned detention order, would submit that the detenu has suffered registration of a case (ground case) in Cr.No.32/2018 firstly under Section 'Man missing', subsequently, the same was altered into one for the offences punishable under Section 302 I.P.C r/w 201 I.P.C. After his arrest, on 11.06.2019, within a month, the impugned detention order was passed on 11.07.2019, without there being any basis or foundation warranting the passing of the impugned detention order. Arguing further, he would further submit that when the second respondent took a ground in the impugned detention order that he was aware of the detenu herein has been lodged in Central Prison, Madurai, and his remand was also extended by 23.07.2019 erroneously, taken a core ground that generally bails are granted by the competent courts after lapse of time, and that is not true and not in practice. Therefore, the subjective satisfaction reached by the second respondent that generally, bails are granted by the competent courts, then, there is a possibility for the detenu also coming out on bail, cannot be considered, for the reason that the detaining authority has passed the impugned order with subjective satisfaction. Moreover, the detenu/petitioner has faced only a solitary case that has been registered for an offence under Section 302 I.P.C r/w 201 I.P.C.

3.In support of his submission, the learned counsel appearing for the petitioner would further submit that in a similar occasion, while dealing with an identical issue, the Honourable Apex Court, in the case of **Rekha Vs State of Tamil Nadu through Secretary to Government and another, reported in (2011) 5 Supreme Court Cases 244**, held that the detaining authority cannot generalise that the courts are, after lapse of time, granting bail, logically, when no bail application is pending and in such cases, there is no likelihood of the person, releasing on bail. Secondly, when the representation was sent by the petitioner on 25.07.2019, the same was rejected by the respondents on 16.08.2019. Therefore, the delay caused in considering the representation has not been explained by any one. This, according to him, would vitiate the impugned detention order.

4.The respondents have not filed any counter affidavit. But, in reply, the learned Additional Public Prosecutor appearing for the respondent orally submitted that when the petitioner made a representation on 25.07.2019, remarks were called for immediately and thereafter, the same was dealt with by the authorities as soon as possible and finally, it was rejected by



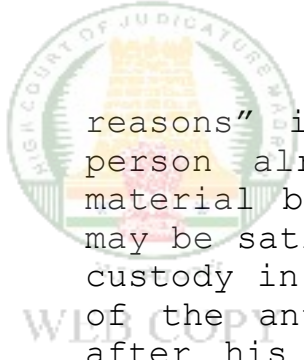
the respondents on 16.08.2019. Hence, there was no delay in considering the representation. Thus, he prayed for confirmation of the impugned detention order.

5. We have heard the learned counsel on either side and perused the materials available on record.

6. Considering the above submissions, we are of the considered view that why the respondents have not considered the representation on time, is also not explained by the learned Additional Public Prosecutor. Therefore, for not explaining the delay, we are of the view that the impugned detention order is liable to go. Further, the core ground taken by the detaining authority that bails are generally granted by the competent courts, after the lapse of time, cannot be accepted for the reason that no bail application is pending or filed and on that score also, the impugned detention order has to be set aside. The Hon'ble Apex Court in **Rekha case** (mentioned supra) has considered this aspect as follows:-

"27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed."

7. A perusal of the above observation made by the Honourable Apex Court, it is clear that when the detenu/petitioner has not moved any bail application, it is too far to say that there is a likelihood of the person in custody being released on bail. In the present case, admittedly, there is no bail application filed by the detenu. In similar circumstances, the Honourable Apex Court in **Huidrom Konungjao Singh Vs State of Manipur and Others**, reported in (2012) 3 MLJ (Cr1) 794, has held in paragraph No.6 therein that the expression "compelling



reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities. Whilso, the conclusion reached by the Detaining Authority that the detenu may be released on bail is mere *ipse dixit* of the Detaining Authority. Therefore, the impugned detention order is liable to be quashed. Secondly, on the point of delay, as explained above, even though there is 15 days delay, that 15 days delay has not been explained properly. On the ground of delay also, the impugned order also vitiates. Therefore also, the impugned order has to be set aside.

8. Accordingly, this petition is allowed. Consequently, the impugned detention order passed by the second respondent in Detention Order No.6/2019/C3 dated 11.07.2019 is set aside and the detenu namely Praveenkumar, S/o.Athimannan, aged about 20 years, who is detained in Central Prison, Madurai is set at liberty. The Superintendent of Central Prison, Madurai/third respondent is directed to release him forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar(CS)

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/ /2020

Sub Assistant Registrar(CS)

vs

To

- 1.The Secretary to the Government
Home, Prohibition & Excise Department,
Secretariat,
Chennai-09.
- 2.The District Magistrate and District Collector,
Theni District,
Theni.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.



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.1064 of 2019
10.02.2020

avs (CO)
TR(11.03.2020) 5P 6C