



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.02.2020**

CORAM:

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

AND

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

H.C.P. (MD) No.1061 of 2019

S.Kanthammal

: Petitioner

Vs

1.The Principal Secretary to Government

Government of Tamil Nadu

Home, Prohibition & Excise IX,

Secretariat,

George Fort

Chennai-09.

2.The District Collector and District Magistrate,

Dindigul, Dindigul District.

3.The Superintendent of Prison,

Madurai 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 entire records on the file of the second respondent in Detention order No.47 of 2019 dated 11.08.2019 and set aside the same and direct the respondents to produce the detenu by name Anand @ Auto Anand, S/o.Savariar, Male aged about 24 years, who is detained in Central Prison, Madurai before this Court and set him at liberty forthwith.

For Petitioner

: Mr.J.William Christopher

For Respondents

: Mr.K.Dinesh Babu

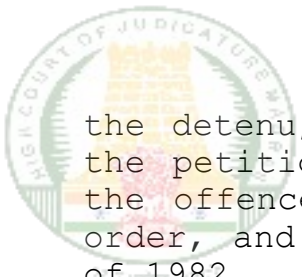
Addl.Public Prosecutor

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 Collector and District Magistrate, Dindigul District, in Detention order No.47 of 2019 dated 11.08.2019 branding the petitioner's son viz., Anand @ Auto Anand, S/o.Savariar as 'Goonda'.

2.Mr.J.William Christopher, learned counsel for the petitioner, assailing the impugned detention order, pleaded that when there was no case except the case registered in Cr.No.241/2019 for the offences punishable under Sections 147, 294(b), 323, 324 and 302 I.P.C by the Palani Taluk Police Station, it is a clear case, where the respondent can prosecute the accused under normal Criminal Procedure Code along with registered Indian Penal code offences. Whiles, they have wrongly invoked the Act 14 of 1982, to brand the detenu as Goonda, without there being any justification. When there is no adverse case and there is not even any bad antecedent against



the detenu, a detailed representation dated 14.09.2019 was made by the petitioner, explaining that his son did not involve in any of the offences, which are prejudicial to the maintenance of law and order, and hence, they should not invoke the provisions of Act, 14 of 1982.

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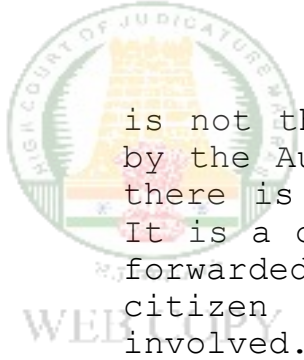
3.It was again canvassed by the learned counsel appearing for the petitioner that the petitioner has sent a representation to the respondents on 14.09.2019 and the same was received on 23.09.2019 by the respondents. They called for remarks on 24.09.2019 and the remarks were received on 30.09.2019. But, without even considering the genuine case of the petitioner, they rejected the same belatedly on 02.12.2019. But, till date, the petitioner's family was not aware of the fate of representation dated 14.09.2019. This act of the respondents violates the Constitutional mandate embedded under Article 22(5). Hence, according to the learned counsel, the impugned order stands vitiated and therefore, the present petition deserves to be allowed and a direction may be issued to the respondents to release the detenu.

4.A detailed counter affidavit has been filed by the second respondent. Even after producing a proforma, learned Additional Public Prosecutor has submitted that the representation, dated 14.09.2019 was received on 23.09.2019. On 24.09.2019, they called for remarks and they also received the remarks on 30.10.2019. Thereafter, they rejected the representation on 30.10.2019 itself. The rejection letter was also promptly sent to the detenu on 02.12.2019. Hence, there was a delay of 26 days in considering the representation and in between 24.09.2019 to 02.12.2019, there are 10 intervening government holidays. Hence, there was an actual delay of 16 days delay. Hence, according to him, there is no delay and no such violation of Article 22(5) of the Constitution of India has occurred.

5.In support of his contentions, the learned counsel appearing for the petitioner had 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. In the present case, there is no response forthcoming from the respondents

6.The learned counsel has also relied upon a decision, in **Venkatesan @ Maya Venkatesan (2007(1) MLJ (Cr1.) 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



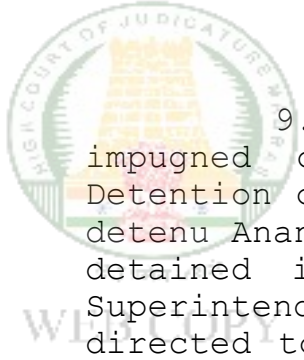
is not the duration or range of delay, but how it is explained by the Authority concerned. In this case, as pointed out above, there is absolutely no explanation for the delay of four days. It is a constitutional obligation to consider the representation forwarded by the detenu without any delay, when 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."

7. 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."

8. In the present case, the delay of 16 days caused in the disposal of the representation, dated 14.09.2019, 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. Further, the rejection of representation was also not intimated to the detenu. 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 16 long days delay. As the delay has not been sufficiently explained, we hold that the action of the respondent 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 Detention order No.47 of 2019 dated 11.08.2019 is set aside and the detenu Anand @ Auto Anand, S/o.Savariar, Male aged about 24 , 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 (CO)

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Sub Assistant Registrar(CS)

vs

To

- 1.The Principal Secretary to Government
Government of Tamil Nadu
Home, Prohibition & Excise IX,
Secretariat, George Fort, Chennai-09.
- 2.The District Collector and District Magistrate,
Dindigul, Dindigul District.
- 3.The Superintendent of Prison,
Madurai Central Prison, Madurai.
- 4.The Joint Secretary to Government,
Public (Law and Order), Fort.St.George, Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.1061 of 2019
11.02.2020

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