



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1119 of 2019

Ramanichandra

...Petitioner/Wife
of Detenue

-vs-

- 1.The Principal Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department (IX)
Fort St.George, Chennai-600 009
- 2.The District Magistrate and District Collector
Office of the District Magistrate and District Collector
Virudhunagar District, Virudhunagar
- 3.The Superintendent of Prison
Madurai Central Prison,
Madurai

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the Respondent No.2 in Cr.M.P.No.23/2019 (GOONDA), dated 15.10.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Vairam @ Vairamuthu, son of Muniyasamy, aged about 25 years, now detained as "Goonda" at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

Heard Mr.R.Alagumani, learned counsel for the petitioner and Mr.V.Neelakandan, learned Additional Public Prosecutor, for the respondents and perused the materials available on record.

2. This habeas corpus petition has been filed by the wife of the detenu, namely, Vairam @ Vairamuthu, son of Muniyasamy, aged about 25 years, against the detention order in Cr.M.P.No.23/2019 (GOONDA), dated 15.10.2019, branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.



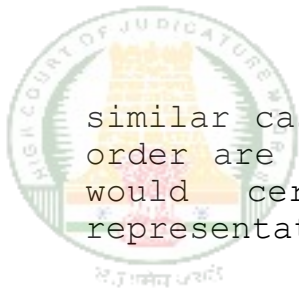
3. The learned counsel for the petitioner would submit that the impugned detention order is liable to be set aside on three grounds. Firstly, the detenu has not filed any bail petition in the ground case, but, the Detaining Authority, on the basis of the bail granted to one Sathishkumar @ Mandhu, by the learned Principal Sessions Judge, Srivilliputhur, by order dated 18.01.2019 in Cr.M.P.No.216 of 2019, has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail by filing bail petition in the ground case. According to the learned counsel for the petitioner, the similar case relied on by the Detaining Authority is not similar to the case of the detenu in this case.

4. Secondly, the detenu has been furnished only with the copy of the bail order dated 18.01.2019 in Cr.M.P.No.216 of 2019, but the copy of the bail petition has not been enclosed in the booklet. The learned counsel for the petitioner placing reliance on the decision of the Honourable Apex Court in the case of **M.Ahamed Kutty vs. Union of India and another**, reported in **1990-2-SCC-1**, would submit that non-furnishing of the relied document would seriously prejudice the valuable rights of the detenu.

5. Thirdly, the representation of the petitioner was not considered in time and there is unexplained and inordinate delay in considering the representation. According to the learned counsel for the petitioner, on these three grounds, the impugned detention order is liable to be set aside.

6. On the other hand, Mr.V.Neelakandan, learned Additional Public Prosecutor, referring to the counter affidavit filed by the second respondent, would argue that the detention order has been passed based on the cogent and relevant materials placed by the Sponsoring Authority and there is no illegality or irregularity in the detention order and it is further submitted that the delay in considering the petitioner's representation has been properly explained and there is no inordinate delay and hence, the habeas corpus petition is liable to be dismissed.

7. In the matter on hand, it is seen that the detenu is having three adverse cases and in all the three adverse cases, he was granted bail. Admittedly, in the ground case, no bail petition has been filed by the detenu, but the Detaining Authority relying on the bail granted to one Sathishkumar @ Mandhu, by the learned Principal Sessions Judge, Srivilliputhur, by order dated 18.01.2019 in Cr.M.P.No.216 of 2019, has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail by filing bail petition in the ground case. It is pertinent to note that the bail petition filed in Cr.M.P.No.216 of 2019 is not found place in the booklet, but bail order alone is enclosed. The Honourable Apex Court in the case of **Ahamed Kutty** (cited supra) has categorically held that bail petitions and the bail orders in



similar cases relied on by the Detaining Authority in the detention order are the vital documents and non-furnishing of those documents would certainly deprive the detenu from making effective representation to the Authority concerned.

8. As rightly pointed out by the learned counsel for the petitioner, in similar case relied on by the Detaining Authority, the accused in that case was granted bail on the ground that the learned Public Prosecutor has no serious objection for granting bail and the co-accused in that case was granted anticipatory bail. In this case, admittedly, the detenu is having three adverse cases and without any iota of material, the Detaining Authority has reached the subjective satisfaction that the detenu in this case would be released on bail as that of the case in Thiruchuli Police Station Crime No.187 of 2018.

9. Furthermore, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 18.10.2019 and it was received on 22.10.2019. Remarks were called for on 23.10.2019 and it was received on 05.11.2019. The Under Secretary as well as the Deputy Secretary dealt with the matter on 07.11.2019 and the concerned Minister dealt with the matter on 27.11.2019 and the representation came to be rejected on 29.11.2019. It is seen that in between 07.11.2019 and 27.11.2019, there is unexplained and inordinate delay of 14 days, after excluding the Government Holidays of five days, in considering the representation.

10. At this juncture, it is useful to refer the decision of the Honourable Apex Court in the case of **Rajammal vs. State of Tamil Nadu and another**, reported in **1999 (1) SCC 417**, wherein it is held as follows:

"7. It is a Constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the consideration for the decision to be taken on the representation, the words 'as soon as may be' in Clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is preempted from explaining the delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable caused. This position has been well delineated by a Constitution Bench of this Court in **M.M. Abdulla Kunhi v. Union of India, 1991 (1)**



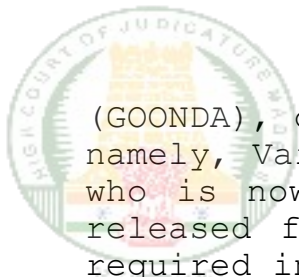
SCC (Cri) 613. The following observations of the Bench can profitably be extracted here: (SCC 484, Para 12)

"It is a Constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in Clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and dispose of with a sense of urgency without any avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the Detention Law concerned within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the Constitutional imperative and it would render the continued detention impermissible and illegal."

8. The position, therefore, now is that if delay was caused on account of nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

11. In the case on hand, as stated supra, the delay of fourteen days in considering the representation of the petitioner has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the grounds stated above.

12. The Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in Cr.M.P.No.23/2019
<https://hcservices.ecourts.gov.in/hcservices/>



(GOONDA), dated 15.10.2019, is set aside. Consequently, the detenu, namely, Vairam @ Vairamuthu, son of Muniyasamy, aged about 25 years, who is now detained at Madurai Central Prison, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

krk / skn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
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Office of the District Magistrate and District Collector,
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Virudhunagar.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
- 4.The Joint Secretary to Government,
Public (law & orders),
Fort ST.George,
Chennai - 9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1119 of 2019

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