



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1154 of 2019

P.Muthammal

...Petitioner/Mother
of the Detenu

-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 Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai, Tirunelveli. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order passed in H.S.(M) Confdl No.67/2019, dated 25.10.2019 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son Ramasamy, aged about 22 years, S/o.Poolpandi now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.V.Neelakandan

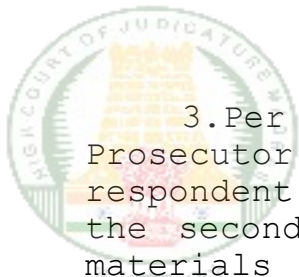
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The mother of the detenu namely, Ramasamy, S/o.Poolpandi, who has been detained by the order of the second respondent dated 25.10.2019, passed in H.S.(M) Confdl No.67/2019, dated 25.10.2019, wherein he has been branded as 'Goonda', has filed this Habeas Corpus Petition.

2.The learned counsel for the petitioner Mr.N.Pragalathan, would urge that the order impugned in this Habeas Corpus Petition is liable to be set aside on the ground of non application of mind on the part of the detaining authority and failure of arrest intimation to the family members of the detenu or his relatives. It is also submitted that the detaining authority failed to annex the bail petition referred in the similar case.



3.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor while reiterating the counter filed by the second respondent would submit that the detention order has been passed by the second respondent on satisfying with the cogent and relevant materials furnished by the detaining authority. According to the learned Additional Public Prosecutor, there is no illegality or irregularity in the detention order warranting interference of this Court. It is further stated that the arrest of the detenu has been properly intimated and hence prayed for dismissal of this Habeas Corpus Petition.

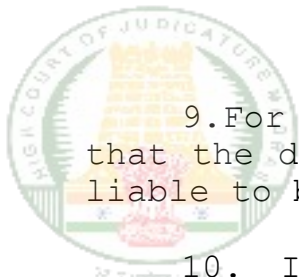
4.We have heard the rival submissions and perused the materials available on records.

5.In the instant case, a perusal of the detention order would show that three adverse cases have been registered against the detenu and he was arrested in the third adverse case and the ground case on 01.10.2019. In paragraph No.7 of the detention order, though the detaining authority has stated about the bail petition filed in the ground case, which was pending before the Judicial Magistrate, Srivaikundam in CrI.M.P.No.5761 of 2019, there is absolutely no reference about the third adverse case and the non consideration of the remand in the third adverse case would show that lack of application of mind on the part of the detaining authority to arrive at a subjective satisfaction.

6.In the matter on hand, it is stated that the arrest of the detenu in the ground case and the third adverse case were intimated through SMS, however, there is no material to show that the said Cell Number mentioned at page Nos.209 and 303 of the booklet belonged to the family members of the detenu or his relatives and the text of the message was also not mentioned in the booklet.

7.This Court, following the decision of the Honourable Apex Court in the case of ***D.K.Basu vs. State of West Bengal***, reported in ***AIR (1997) SC 610***, in several cases, has consistently held that if there is no proper intimation of arrest of the detenu either to his family members or his relatives, his valuable rights would seriously prejudiced on the sense that they will not have the opportunity to make effective representation to the Authority concerned in time for revocation of the detention order.

8.In the case of ***M.Ahamed Kutty vs. Union of India and another***, reported in ***1990-2-SCC-1***, the Hon'ble Apex Court has categorically held that bail petitions and the bail orders in similar cases relied on by the Detaining Authority in the detention order are vital documents and non-furnishing of those documents would certainly deprive the detenu from making effective representation to the Authority concerned for revocation of the detention order.



9. For the forgoing reasons, we are of the considered opinion that the detention order impugned in this habeas corpus petition is liable to be quashed on the ground as stated supra.

10. In fine, the order of detention passed by the second respondent, in H.S.(M) Confdl No.67/2019, dated 25.10.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Ramasamy, S/o.Poolpandi, aged about 22 years, now detained at Central Prison, Palayamkottai, 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)

Rj2

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,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
3. The Superintendent of Prison,
Central Prison, Palayamkottai, Tirunelveli.
4. The Joint Secretary to Government,
Public Law & Order,
Fort St.George, Chennai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.1154 of 2019

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SPU(25.08.2020) 3P 6C