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H.C.P.(MD) No.1160 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P.(MD) No.1160 of 2019

Pushpavalli

... Petitioner

-vs-

1.The Principal Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 9.

2.The Commissioner of Police,
Madurai City,
Madurai.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus to call for the records in pursuant to the proceedings of the second respondent in Detention Order in No.77/BCDFGISSSV/2019 dated 16.10.2019, quash the same and consequently, direct the respondents to produce the detenu, namely, Kaleeswaran @ Kalamkali, S/o Pandi aged 21 years who is now detained in Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.M.Chandrabose

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

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

The present Habeas Corpus Petition has been filed challenging the detention order passed by the second respondent in No.77/BCDFGISSSV/2019 dated 16.10.2019, wherein the petitioner's son/detenu, namely, Kaleeswaran @ Kalamkali, S/o Pandi aged 21 years

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has been detained as 'Goonda' as contemplated under Section 2(f) of the Tamil Nadu Act, 14 of 1982.

2. Though several grounds have been raised to assail the detention order, Mr.M.Chandrabose, learned counsel for the petitioner confines his arguments on the grounds of delay in passing the order of detention from the date of arrest of the detenu. It is submitted that the detenu was arrested in the ground case on 27.08.2019, but the detention order came to be passed only with the delay of 50 days i.e., on 16.10.2019. According to the learned counsel, there is no live link between arrest of the petitioner and the order of detention. Hence, the order of detention is liable to be quashed on this ground alone. In this regard, the learned counsel placed on a decision reported in **2018(2) MWN (Cr.) 207 (Malarkodi vs. Principal Secretary to Government)**.

3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents while reiterating the counter affidavit filed by the second respondent would contend that the detention order has been passed based on the cogent materials placed by the sponsoring authority and there is no illegality or irregularity in the order of detention and hence, he prayed for dismissal of the Habeas Corpus Petition.

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

5. In the matter on hand, it is not in dispute that the detenu was detained by the order of the second respondent dated 16.10.2019 and for the ground case, he was arrested as early as on 27.08.2019. Between 27.08.2019 and 16.10.2019, there is a delay of 50 days and the said delay has not been properly explained. This Court, in the decision cited by the learned counsel for the petitioner in **2018(2) MWN (Cr.) 207 (cited supra)**, has set aside the detention order on the ground of delay by following the earlier order of this Court reported in **2005 MLJ (Cr1.) 752 (Ramesh vs. District Collector and District Magistrate, Tiruchirappalli District and another)**. Wherein it is observed that such delays tend to have an affect of snapping the link between prejudicial activity and passing of preventive orders.

6. 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.

7. In fine, the order of detention passed by the second respondent, in Detention Order in No.77/BCDFGISSSV/2019 dated 16.10.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Kaleeswaran @ Kalamkali, S/o Pandi aged 21 now detained at Central Prison, Madurai is directed to be



released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Deputy Registrar (LA and M)

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/ /2020

Sub Assistant Registrar(CS)

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,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 9.
- 2.The Commissioner of Police,
Madurai City,
Madurai.
- 3.The Superintendent of Prison,
Central Prison,
Madurai
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Government,
Public(Law and Order),
Secretariat, Chennai-9.

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KK(25.08.2020) 3P 6C