



WEB COPY

H.C.P.(MD) No.1172 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1172 of 2019

D.Dhanalakshmi

... Petitioner/Wife of the Detenu

-vs-

1.The State of Tamil Nadu,
represented by the Additional Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Madurai District,
Madurai.

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

... Respondents 1 to 3.

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 records in connection with the order of detention passed by the second respondent dated 17.10.2019 in B.C.D.F.G.I.S.S.V.No.32 of 2019 against the detenu Dhanasekaran, son of Chandran, Male, aged about 37 years, who is now confined at Central Prison, Madurai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.Niranjan S.Kumar

For Respondents : Mr.V.Neelakandan

Additional Public Prosecutor

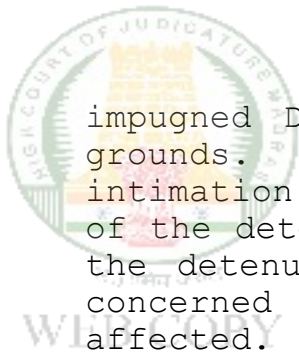
O R D E R

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

This Habeas Corpus Petition has been filed by the wife of the detenu namely, Dhanasekaran, son of Chandran, aged 37 years challenging the Detention Order passed by the second respondent, dated 17.10.2019 in B.C.D.F.G.I.S.S.V.No.32 of 2019, wherein, he has been branded as 'Goonda'.

2.The learned counsel for the Petitioner would submit that even though several grounds have been raised to assail the

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impugned Detention Order, he has confined his arguments on two grounds. According to the learned counsel, there is no proper intimation of the order of detention either to the family member of the detenu or to his relatives and hence the valuable rights of the detenu in making effective representation to the Authorities concerned for revocation of the detention order got seriously affected. It is further further contended by the learned counsel that the procedural safeguards guaranteed under Article 22 of the Constitution of India have not been followed in this case and that the representation of the Petitioner was not considered in time and there is unexplained and inordinate delay in disposal of the petitioner's representation, which would vitiate the impugned order of detention.

3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents while reiterating the averments made in the counter affidavit, would argue that the Detention Order came to be passed based on the cogent and relevant materials produced by the Sponsoring Authority and there is no illegality or irregularity in the impugned detention order. It is further submitted that there is proper intimation of the order of detention and there is no delay in considering the representation of the detenu and prayed for dismissal of the Habeas Corpus Petition.

4. In the matter on hand, a perusal of the booklet at Page No.203 would reveal that the Order of Detention has been informed to the friend of the detenu to his Cell phone No.7200077288. Further, there is no record to show that the said Cellphone Number belongs to the Detenu and there is no text of the intimation found in the booklet. Further, in the instant case, the pro-forma furnished by the learned Additional Public Prosecutor would indicate that aggrieved over the detention order, dated 17.10.2019, the petitioner made a representation to the first respondent on 1.11.2019 and it was received on 4.11.2019 and even though the remarks were called for on the same day ie., on 4.11.2019, it was received only on 21.11.2019. Then the files were circulated to the Under Secretary, Deputy Secretary and to the concerned Minister on 21.11.2019, 21.11.2019 and 27.11.2019 respectively and eventually, the representation was rejected on 29.11.2019. It is seen that in between 4.11.2019 and 21.11.2019, there was a delay of 17 days, after excluding the Government Holidays of 3 days, there was a delay of 14 days in considering the petitioner's representation.

5. 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 the Apex Court has observed and held that it is for the Authority concerned to explain the delay, if any, in disposal of the representation and if any delay was caused on account of nay indifference or lapse in



considering the representation, such delay will adversely affect further detention of the prisoner.

6. In the case on hand, as stated supra, the delay of 14 days in considering the representation of the petitioner remains unexplained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the ground of delay by following the decision of the Honourable Apex Court referred supra and also on the ground that the arrest intimation was not properly intimated to the detenu.

7. In the light of the above facts and circumstances, we are convinced that the impugned detention order would not stand to the scrutiny of this Court and the same is, therefore, liable to be set aside.

8. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the Second Respondent in B.C.D.F.G.I.S.S.S.V.No.32 of 2019, dated 17.10.2019, is set aside. Consequently, the detenu, namely, Dhanasekaran son of Chandran, aged about 37 years, who is 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 / proceedings.

Sd/-

Assistant Registrar (CO)

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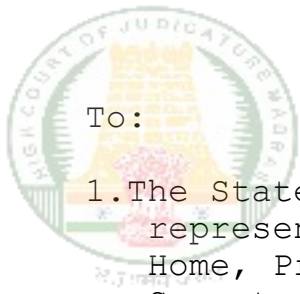
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Sub Assistant Registrar(CS)

vsn

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 State of Tamil Nadu,
represented by the Additional Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
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Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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PM(CO)
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