



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2020

CORAM:

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1167 of 2019

Perumalammal ... Petitioner / Mother of the detenu

-vs-

1.State of Tamil Nadu rep. by

The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 9.

2.The District Magistrate and District Magistrate,
O/o the District Magistrate and District Magistrate,
Pudukkottai District, Pudukkottai.

3.The Superintendent,
Central Prison, Tiruchirappalli. ... Respondents

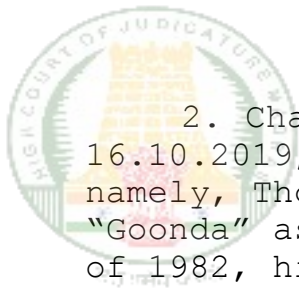
PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records in detention order passed in P.D.O.No.63/2019 dated 16.10.2019 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner's son namely, Thoppi Siva @ Sivakumar S/o Mayandi, male, aged 26 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.G.Arun Kumar
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.K.G.Arunkumar learned counsel for the petitioner and Mr.V.Neelakandan, learned Additional Public Prosecutor for the respondents and perused the materials available on record.



2. Challenging the order of detention in P.D.O.No.63/2019 dated 16.10.2019, passed by the second respondent, branding the detenu, namely, Thoppi Siva @ Sivakumar S/o Mayandi, male, aged 23 years, as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982, his mother has filed this habeas corpus petition.

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3. The learned counsel for the petitioner would submit that the detention order impugned in this habeas corpus petition is liable to be set aside on three grounds. Firstly, since the detenu has not filed any bail application in the ground case, there is no likelihood of the detenu coming out on bail and indulging in similar offences in future, hence, the subjective satisfaction reached by the Detaining Authority cannot be countenanced. In this regard, the learned counsel has placed reliance upon the decision of the Honourable Apex Court in the case of **Rekha vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244**. Secondly, there was no proper intimation of arrest of the detenu in the ground case. He would further submit that no details have been furnished particularly the cell number mentioned at paragraph 41 of the booklet, whether it belongs to the family members of the detenu or his relatives. It is also stated that the text of the SMS also not found in the booklet. In this regard, the learned counsel has placed reliance upon 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**. Thirdly, there is unexplained delay in considering the representation of the petitioner, which would vitiate the detention order. In this regard, the learned counsel has placed reliance upon 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**.

4. Per contra, the learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, submitted that the Detaining Authority has arrived at the subjective satisfaction based on the cogent and relevant materials placed by the Sponsoring Authority and there is no infirmity or irregularity in the impugned order of detention passed by the second respondent and hence, prayed for dismissal of the habeas corpus petition.

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

6. In the instant case, admittedly, no bail petition has been filed in the ground case by the detenu, however, the Detaining Authority, arrived at the subjective satisfaction that the detenu is likely to be granted bail in the ground case and he would indulge in the acts, which are prejudicial to the maintenance of the public order.

7. The Honourable Apex Court in the case of **Rekha vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244** has held as follows:

<https://hccservices.tamilnadu.gov.in/hccservices>



"7. A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that "in similar cases bails were granted by the courts". In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order.

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27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.

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36. It has been held that the history of liberty is the history of procedural safeguards. (See Kameleshkumar Ishwardas Patel v. Union of India [(1995) 4 SCC 51 : 1995 SCC (Cri) 643] vide para 49.) These procedural safeguards are required to be zealously watched and enforced by the court and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu. As observed in Rattan Singh v. Stae of



Punjab [(1981) 4 SCC 481 : 1981 SCC (Cri) 853]: (SCC p.483, para 4)

"4. ... May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic set up, it is essential that at least those safeguards are not denied to the detenus."

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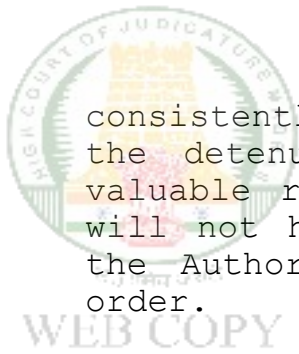
39. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of judicial vigilance that is needed was aptly described in the following words in Thomas Pelham Dale case : [(1881) 6 QBD 376 (CA)] (QBD p.461)

"Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue."

8. As rightly pointed out by the learned counsel for the petitioner, there is no material available on record to establish that there is likelihood of the detenu coming out on bail. So, in our opinion, the subjective satisfaction arrived at by the Detaining Authority is without any material and it shows non-application of mind on the part of the Detaining Authority and the decision referred supra would squarely apply to the case on hand.

9. Further, perusal of the arrest intimation form available at Page No.41 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell No.9360145543. However, nothing is produced to show that the said Cell Number belongs to the family members of the detenu or his relatives and the text of the message is also not found place in the booklet.

10. This Court, following the decision of the Honourable Apex Court in the case of **D.K. Basu** (cited supra), 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 be 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.

11. It is not in dispute that the detenu was detained by the order of the second respondent, dated 16.10.2019. Aggrieved over the same, a representation dated 22.10.2019 has been sent to the first respondent and the same was received on 05.11.2019 and on the same day, remarks were called for and the remarks were received on 18.11.2019. The Under Secretary and the Deputy Secretary dealt with the matter on 19.11.2019. The concerned Minister dealt with the matter on 27.11.2019 and thereafter, the detenu's representation was rejected on 02.12.2019. It is seen that there was a delay of 13 days between 05.11.2019 to 18.11.2019. It is also seen that there are 3 Government holidays and after excluding the same, there is a delay of 10 days in considering the representation of the detenu.

12. 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 Constitution 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 causes. 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 disposed of with a sense of



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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."

13. In the case on hand, there is absolutely no explanation for the delay of 10 days in considering the representation of the detenu. Hence, in our considered view, the detention order is liable to be set aside by following the decisions of the Honourable Apex Court referred supra.

14. In that view, the order of detention passed by the second respondent, in P.D.O.No.63/2019 dated 16.10.2019, is set aside and the habeas corpus petition is allowed. Consequently, the detenu, namely, Thoppi Siva @ Sivakumar S/o Mayandi, male, aged 26 years who is now detained at Central Prison, Trichy is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

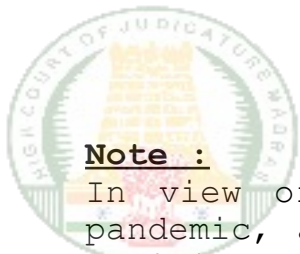
Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)



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 Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 9.
- 2.The District Magistrate and District Magistrate,
O/o the District Magistrate and District Magistrate,
Pudukkottai District, Pudukkottai.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George, Chennai - 09.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1167 of 2019
31.07.2020

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