



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD) No.1164 of 2019

Ajithkumar

: Petitioner

Vs

1.The Principal Secretary to Government

State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-09.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate
Theni District,
Theni.

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

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of the second respondent in Detention Order No.5/2019/C3 dated 11.07.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Ajithkumar, S/o.Kannan, aged about 23 years, now confining as 'Goonda' at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

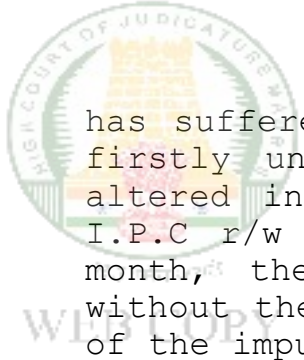
For Respondents : Mr.K.Dinesh Babu
Addl.Public Prosecutor

O R D E R

[Order of the Court was made by **T.RAJA, J.**]

The detenu, who is now confined at Madurai Central Prison, branding as a 'Goonda', himself has filed this Habeas Corpus Petition, challenging the correctness of the impugned detention order passed by the second respondent/District Collector and District Magistrate, Theni District, in Detention Order No.5/2019/C3 dated 11.07.2019 and quash the same.

2.Learned counsel appearing for the petitioner, assailing the impugned detention order, would submit that the petitioner/detenu



has suffered registration of a case (ground case) in Cr.No.32/2018 firstly under Section 'Man missing', subsequently, the same was altered into one for the offences punishable under Section 302 I.P.C r/w 201 I.P.C. After his arrest, on 10.06.2019, within a month, the impugned detention order was passed on 11.07.2019, without there being any basis or foundation warranting the passing of the impugned detention order. Arguing further, he would further submit that when the second respondent took a ground in the impugned detention order that he was aware of the detenu/petitioner herein has been lodged in Central Prison, Madurai, and his remand was also extended by 23.07.2019 erroneously, taken a core ground that generally bails are granted by the competent courts after lapse of time, and that is not true and not in practice. Therefore, the subjective satisfaction reached by the second respondent that generally, bails are granted by the competent courts, then, there is a possibility for the detenu also coming out on bail, cannot be considered, for the reason that the detaining authority has passed the impugned order with subjective satisfaction. Moreover, the detenu/petitioner has faced only a solitary case that has been registered for an offence under Section 302 I.P.C r/w 201 I.P.C.

3.In support of his submission, the learned counsel appearing for the petitioner would further submit that in a similar occasion, while dealing with an identical issue, the Honourable Apex Court, in the case of **Rekha Vs State of Tamil Nadu through Secretary to Government and another, reported in (2011) 5 Supreme Court Cases 244**, held that the detaining authority cannot generalise that the courts are, after lapse of time, granting bail, logically, when no bail application is pending and in such cases, there is no likelihood of the person, releasing on bail. Secondly, when the representation was sent on 31.10.2019, the same was received on 12.11.2019, remarks were called for on the same day and remarks were received on 28.11.2019 and thereafter, the authorities rejected the same only on 16.12.2019 and the rejection letter was sent to the detenu on 17.12.2019. Therefore, from 28.11.2019 till 16.12.2019, there has been a huge delay of 19 days and this long delay of 19 days has not been explained by any one. This, according to him, would vitiate the impugned detention order.

4.In reply, the learned Additional Public Prosecutor appearing for the respondent submitted that it is not 19 days delay, as erroneously pleaded by the learned counsel for the petitioner, which would warrant interference from this Court to quash the impugned order. When the representation dated 31.10.2019 was received by the respondent on 12.11.2019, remarks were called for on the same day and after receipt of the remarks on 28.11.2019, this was analysed and considered by the higher authorities on 14.12.2019. Therefore, between 28.11.2019 and 14.12.2019, there were 4 intervening holidays. Hence, there was a delay of only 15 days. Thus, he prayed for confirmation of the impugned detention order.



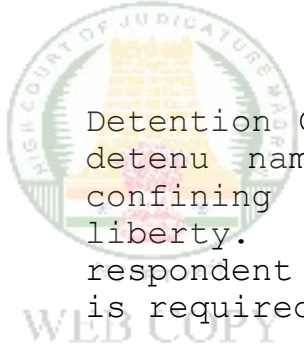
5. We have heard the learned counsel on either side and perused the materials available on record.

6. Considering the above submissions, we are of the considered view that even the 15 days delay is not explained and why the respondents have not considered the representation on time, is also not explained by the learned Additional Public Prosecutor. Therefore, for not explaining the long delay of 15 days, we are of the view that the impugned detention order is liable to go. Thirdly, the core ground taken by the detaining authority that bails are generally granted by the competent courts, after the lapse of time, cannot be accepted for the reason that no bail application is pending or filed and on that score also, the impugned detention order has to be set aside. The Hon'ble Apex Court in **Rekha case** (mentioned supra) has considered this aspect as follows:-

"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."

7. A perusal of the above observation made by the Honourable Apex Court, it is clear that when the detenu/petitioner has not moved any bail application, it is too far to say that there is a likelihood of the person in custody being released on bail. In the present case, admittedly, there is no bail application. Therefore, following the ratio laid down by the Honourable Apex Court in **Rekha case** as mentioned supra, holding that logically when there is no bail application pending, there is no possibility of person in custody, likely to come out on bail. Accordingly, the impugned detention order is liable to be quashed. Secondly, on the point of delay, as explained above, even though there is 15 days delay, that 15 days delay has not been explained properly. On the question of delay also, the impugned order also vitiates. Therefore also, the impugned order has to be set aside.

8. Accordingly, this petition is allowed. Consequently, the impugned detention order passed by the second respondent in



Detention Order No.5/2019/C3 dated 11.07.2019 is set aside and the detenu namely Ajithkumar, S/o.Kannan, aged about 23 years, now confining as 'Goonda' as at Madurai Central Prison is set at liberty. The Superintendent of Central Prison, Madurai/third respondent is directed to release him forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar (AD-I)

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/ /2020

Sub Assistant Registrar(CS)

vs

To

- 1.The Principal Secretary to Government
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-09.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate
Theni District,
Theni.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
4. The Joint Secretay to Government,
Public (Law & Order)
Fort St. George, Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD)No.1164 of 2019
29.01.2020

VB(24.02.2020) 4P 6C