



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1239 of 2019

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Krishnaveni

... Petitioner

-vs-

1.State, rep.by

The Principal Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai-9

2.The District Collector and District Magistrate

Thoothukudi District
Thoothukudi

3.The Superintendent

Central Prison
Palayamkottai
Tirunelveli District

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying to call for records in H.S.(M) Confdl.No.66/19, dated 23.10.2019 and issue a writ, order or direction more particularly in the nature of Writ of Habeas Corpus or any other order or direction, directing the respondents herein to produce the detenu namely Kumar, son of Sappani, aged 40 years, who has been termed as "Goonda" and now confined in Central Prison, Palayamkottai and set aside the same and set the detenu at liberty.

For Petitioner : Mr.K.Navaneetha Raja

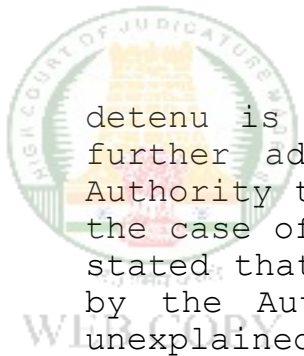
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

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, Kumar, son of Sappani, aged 40 years, against the detention order passed by the second respondent, in H.S.(M) Confdl.No.66/19, dated 23.10.2019, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.

2. Mr.K.Navaneetha Raja, learned counsel for the petitioner, would argue that the Detaining Authority has passed the impugned order on surmise and there is no material to show that the



detenu is likely to be released on bail in the ground case. He further added that the similar case relied on by the Detaining Authority to arrive at the subjective satisfaction is not similar to the case of the detenu. The learned counsel for the petitioner also stated that the representation of the petitioner was not considered by the Authority concerned in time and there is inordinate and unexplained delay in disposal of the petitioner's representation. According to the learned counsel for the petitioner, on these two grounds, the impugned detention order is liable to be set aside.

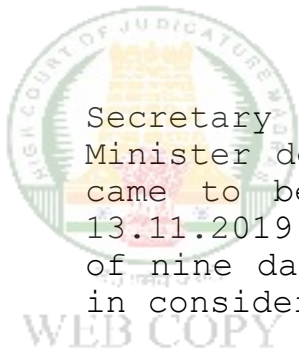
3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, by referring to the counter affidavit filed by the second respondent, submitted that the detention order has been rightly passed by the second respondent taking note of the activities of the detenu and it has been passed to prevent the detenu from indulging in similar activities in future. It is the submission of the learned Additional Public Prosecutor that the delay in disposal of the representation has not caused any prejudice to the detenu and hence, prayed for dismissal of the habeas corpus petition.

4. We have heard the rival submissions and perused the materials placed on record.

5. In the instant case, admittedly, there is no adverse case registered against the detenu. The detenu has been branded as "Goonda" by the second respondent only on the basis of the ground case registered for the offence under Section 302 I.P.C. In Paragraph No.7 of the detention order, it has been stated that the detenu was arrested on 25.09.2019 and remanded to judicial custody upto 10.10.2019 and the remand was extended upto 24.10.2019. The Detaining Authority, to arrive at the subjective satisfaction, has stated that the detenu has tried to file bail petition before the appropriate Court in the ground case and in a similar case, one Ramakrishnan was granted bail by the learned Vacation Sessions Judge, Thoothukudi, by order dated 29.05.2014 in Cr.M.P.No.1265 of 2014.

6. When no bail petition is filed in the ground case, admittedly, there is no possibility for him to come out on bail. The similar case bail order is not relating to the co-accused in this case, but to some other accused in some other case. Hence, the subjective satisfaction has been reached by the Detaining Authority on the *ipse dixit* statement without any material and it shows non-application of mind on the part of the Detaining Authority while passing the impugned detention order.

7. Further, it is seen from the proforma furnished by the learned Additional Public Prosecutor that the representation of the petitioner, dated 05.11.2019, was received on 08.11.2019. Remarks were called for on the same day i.e. on 08.11.2019 and it was received on 11.11.2019. The Under Secretary as well as the Deputy



Secretary dealt with the matter on 13.11.2019. The concerned Minister dealt with the matter on 27.11.2019 and the representation came to be rejected on 29.11.2019. It is seen that in between 13.11.2019 and 27.11.2019, there is inordinate and unexplained delay of nine days, after excluding the Government Holidays of four days, in considering the petitioner's representation.

8. 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 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 consideration 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 caused. 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 dispose of with a sense of 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



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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."

9. In the case on hand, as stated supra, the delay of nine days has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the grounds of non-application of mind and delay by following the decision of the Honourable Apex Court referred supra.

10. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in H.S.(M) Confdl.No.66/19, dated 23.10.2019, is set aside. Consequently, the detenu, namely, Kumar, son of Sappani, aged 40 years, who is 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 / proceedings.

Sd/-

Assistant Registrar

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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.



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To:

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

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

3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1239 of 2019
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