



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2020

CORAM:

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

H.C.P. (MD) No.1225 of 2019

Muthupandi

... Petitioner

-VS-

- 1.The Additional Chief Secretary to Government
The State of Tamilnadu
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009
 - 2.The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Tirunelveli District, Tirunelveli
 - 3.The Superintendent of Prison
Palayamkottai Central Prison
Tirunelveli District
- ... Respondents

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 entire records, connected with the detention order of the Respondent No.2 in M.H.S.Confdl.No.76/2019, dated 05.10.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Muthupandi, son of Ramar @ Ramasamy, aged about 33 years, now detained as "Goonda" at Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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.R.Alagumani, learned counsel for the petitioner and Mr.V.Neelakandan, learned Additional Public Prosecutor for the respondents and perused the materials available on record.

2. This habeas corpus petition has been filed by the detenu, namely, Muthupandi, son of Ramar @ Ramasamy, aged about 33 years, challenging the detention order in M.H.S.Confdl.No.76/2019, dated 05.10.2019, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1981.

3. The learned counsel for the petitioner submitted that the impugned detention order is liable to be set aside on two grounds, namely, (i) failure to intimate the arrest of the detenu either to his family members or his relatives and (ii) delay in disposal of the representation. Firstly, the learned counsel for the petitioner would submit that the non-intimation of arrest would seriously affect the valuable rights of the detenu to make effective representation to the Authorities concerned for revocation of the detention order. Secondly, the representation of the petitioner was not considered in time and there is unexplained and inordinate delay in considering the representation. According to the learned counsel for the petitioner, on these two grounds, the impugned detention order is liable to be set aside. In support of his contentions, the learned counsel has placed reliance upon the decisions of the Honourable Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610** and **Rajammal vs. State of Tamil Nadu and another**, reported in **1999 (1) SCC 417**.

4. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents, while reiterating the counter affidavit filed by the second respondent, would submit that the detention order has been passed by the Detaining Authority after satisfying with the materials placed by the Sponsoring Authority and there is no illegality or irregularity in the detention order. Furthermore, the intimation of arrest of the detenu was given through SMS and hence, the rights of the detenu has not been affected in any manner and it is further submitted that the delay in considering the petitioner's representation has been properly explained and there is no inordinate delay and hence, the habeas corpus petition is liable to be dismissed



5. A perusal of the arrest intimation form available at Page No.235 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell No.8489336173. However, there is no material 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. 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 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.

6. Furthermore, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 31.10.2019 and it was received on 05.11.2019. Remarks were called for on the same day i.e.05.11.2019 and it was received on 21.11.2019. The Deputy Secretary dealt with the matter on 22.11.2019. 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 05.11.2019 and 21.11.2019, there was a delay of 12 days, after excluding the Government Holidays of 03 days, in considering the petitioner's representation.

7. The Honourable Apex Court in the case of **Rajammal** (cited supra), has 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

<https://hcservices.ecourts.gov.in/hcservices> here: (SCC 484, Para 12)



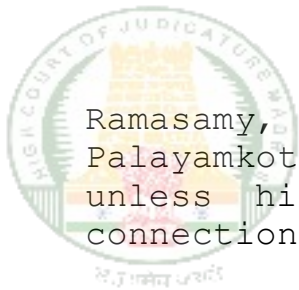
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"It is a Constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in Clause (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 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."

8. In the case on hand, as stated supra, the delay of 12 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 failure to intimate the arrest of the detenu either to his family members or his relatives and delay in disposal of the representation, by following the decisions of the Honourable Apex Court referred supra.

9. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in M.H.S.Confdl.No.76/2019, dated 05.10.2019, is set aside. Consequently, the detenu, namely, Muthupandi, son of Ramar @



Ramasamy, aged about 33 years, who is now detained at Palayamkottai Central Prison, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

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Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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,
The State of Tamilnadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
4. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1225 of 2019

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db(CO)

TR(17.08.2020) 5P 6C

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