



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2020

CORAM:

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

H.C.P. (MD) No.1302 of 2019

Malliga

... Petitioner/Mother of
Detenue

-vs-

1.State of Tamil Nadu, rep.by
The Principal Secretary to Government
Home, Prohibition and Excise Department
Fort.St.George,
Chennai-9

2.The Commissioner of Police
O/o.The Commissioner of Police
Tiruchirappalli City
Tiruchirappalli

3.The Superintendent
Central Prison
Tiruchirappalli

... 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 in detention order passed in C.No.29/Detention/C.P.O/T.C/2019, dated 28.11.2019, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Somu alias Somasundaram, son of Nagarathinam, male, aged 28 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

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 mother of the detenu, namely, Somu alias Somasundaram, son of Nagarathinam, aged 28 years, against the detention order in C.No.29/Detention/C.P.O/T.C/2019, dated 28.11.2019, branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

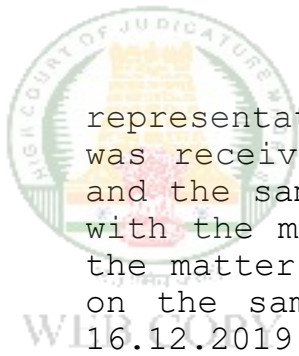
2. It is submitted by Mr.K.A.S.Prabhu, learned counsel for the petitioner, that the detention order impugned in this habeas corpus petition is liable to be set aside on two grounds. Firstly, though the bail order granted in the similar case has been annexed at Page No.109 of the booklet, the petition copy has not been furnished to the detenu. Secondly, there was inordinate and unexplained delay in considering the petitioner's representation.

3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, would submit that the detention order has been passed on the basis of the materials furnished by the Sponsoring Authority. The antecedent of the detenu would show that he will indulge in similar activities in future and hence, there was no illegality and irregularity in the detention order. It is further stated that the delay said to have been caused in considering the representation has caused no prejudice to the detenu and hence, prayed for dismissal of the habeas corpus petition.

4. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents and carefully perused the materials available on record.

5. In the matter on hand, as rightly pointed out by the learned counsel for the petitioner, in the similar case, the Detaining Authority has only considered the bail order, which is enclosed at Page No.109 of the booklet. A perusal of the records would show that the copy of the bail application filed in Cr.M.P.No.627 of 2012 was not enclosed in the typed set. The Honourable Apex Court in the case of **M.Ahamed Kutty vs. Union of India and another**, reported in **1990-2-SCC-1** has categorically held that bail petitions and the bail orders in similar cases relied on by the Detaining Authority in the detention order are the vital documents and non-furnishing of those documents would certainly deprive the detenu from making effective representation to the Authority concerned.

6. The proforma furnished by the learned Additional Public Prosecutor would indicate that the detention order came to be passed on 28.11.2019. Aggrieved over the same, the petitioner made a



representation to the first respondent on 05.12.2019 and the same was received on 09.12.2019. Remarks were called for on 10.12.2019 and the same was received on 16.12.2019. The Deputy Secretary dealt with the matter on 16.12.2019 and the concerned Minister dealt with the matter on 07.01.2020 and the representation came to be rejected on the same day i.e. on 07.01.2020. It is seen that in between 16.12.2019 and 07.01.2020, there is unexplained and inordinate delay of thirteen days, after excluding the Government Holidays of eight days, in considering the representation.

7. 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 disposed 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



WEB COPY

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 thirteen 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 as stated supra, by following the above referred decisions of the Honourable Apex Court.

9. The Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in C.No.29/Detention/C.P.O/T.C/2019, dated 28.11.2019, is set aside. Consequently, the detenu, namely, Somu alias Somasundaram, son of Nagarathinam, aged 28 years, who is now detained at Central Prison, Tiruchirappalli, 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 ()

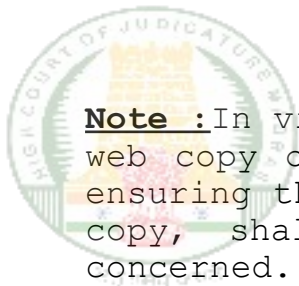
// True Copy //

/ /2020

Sub Assistant Registrar(CS)

krk

<https://hcservices.ecourts.gov.in/hcservices/>



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.

WEB COPY

To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort.St.George, Chennai-9.
- 2.The Commissioner of Police,
O/o.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1302 of 2019

28.07.2020

SPU(07.08.2020) 5P 5C