



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1334 of 2019

Lakshmi : Petitioner/Wife of the detenue

-vs-

1.State of Tamil Nadu

Rep.by the Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009

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

3.The Superintendent of Prison
Central Prison
Palayamkottai, Tirunelveli

... 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 passed in H.S. (M) Confdl No.75/2019, dated 03.12.2019, on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's husband Kesavan, aged about 43 years, son of Thangavel Nadar, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

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.N.Pragalathan, 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 wife of the detenu, namely, Kesavan, son of Thangavel Nadar, aged about 43 years, against the detention order in H.S.(M) Confdl No.75/2019, dated 03.12.2019, branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.



3. The learned counsel for the petitioner would submit that the impugned detention order is liable to be set aside on two grounds. Firstly, no bail petition was filed by the detenu in the ground case, but, the Detaining Authority, to arrive at the subjective satisfaction, in Paragraph No.7 of the detention order, has stated that in a similar case, registered in Kovilpatti East Police Station Crime No.332 of 2016, bail was granted by this Court, vide order dated 23.12.2016 in CrI.O.P.(MD) No.23893 of 2016, to one Kanagaraj. It is the submission of the learned counsel for the petitioner that when no bail petition has been filed by the detenu in the ground case, the subjective satisfaction reached by the Detaining Authority is without any basis and there is no imminent possibility of the detenu coming out on bail by filing bail petition before the appropriate Court in the ground case, which shows lack of application of mind on the part of the Detaining Authority while passing the impugned detention order. Secondly, the representation of the petitioner was not considered in time and there is unexplained and inordinate delay in considering the representation.

4. On the other hand, Mr.V.Neelakandan, learned Additional Public Prosecutor would argue that the detention order has been passed based on the cogent and relevant materials placed by the Sponsoring Authority and there is no illegality or irregularity in the detention order 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. In the matter on hand, in Paragraph No.7 of the detention order, the Detaining Authority has stated that the detenu has tried to file bail petition before the appropriate Court in the ground case. Perusal of the records shows nothing is available to make such statement. However, the Detaining Authority referred to the bail granted to one Kanagaraj, by this Court, vide order dated 23.12.2016 in CrI.O.P.(MD) No.23893 of 2016 to arrive at the subjective satisfaction, which shows lack of application of mind on the part of the Detaining Authority.

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

"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. State 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."

7. 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 10.12.2019 and it was received on 17.12.2019. Remarks were called for on the same day i.e. 17.12.2019 and it was received on 20.12.2019. The Deputy Secretary dealt with the matter on the same day i.e. 20.12.2019 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. 07.01.2020. It is seen that in between 20.12.2019 and 07.01.2020, there is unexplained delay of nine days, after excluding the Government Holidays of eight days, in considering the 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 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 in considering the representation of the petitioner 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 lack of application of mind on the part of the Detaining Authority and delay in considering the petitioner's representation, by following the decisions 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.75/2019, dated 03.12.2019, is set aside. Consequently, the detenu, namely, Kesavan, son of Thangavel Nadar, aged about 43 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.

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,
Fort St.George, Chennai-600 009.
2. The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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