



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2020

CORAM:

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

H.C.P. (MD) No.1333 of 2019

Mohammed Rafi

... Petitioner

-VS-

1.The Principal Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009

2.The Commissioner of Police
Office of the Commissioner of Police
Tiruchirappalli City
Tiruchirappalli

3.The Superintendent of Prison
Trichirappalli 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 connected with the detention order of the respondent No.2 in C.No.30/Detention/C.P.O/T.C/2019 dated 30.11.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Mohammed Rafi, son of Allah Baksh, aged about 32 years, now confining as "Goonda" at Tiruchirappalli 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.)

This habeas corpus petition has been filed by the detenu, namely, Mohammed Rafi, son of Allah Baksh, aged about 32 years, against the detention order passed by the second respondent, in C.No.30/Detention/C.P.O/T.C/2019 dated 30.11.2019, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.

2. Though several grounds have been raised challenging the impugned detention order, Mr.R.Alagumani, learned counsel for the petitioner, would mainly contend that the impugned order of detention is liable to be set aside on the grounds of non-availability of proof for intimation of arrest of the detenu to his sister and delay in considering the petitioner's representation.

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 further submission of the learned Additional Public Prosecutor that arrest of the detenu has been properly intimated to his sister and 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, a perusal of the Arrest Intimation Form available at Page No.88 of the booklet, would show that the arrest of the detenu in the ground case was intimated to his sister Hathiyyabanu, but, her signature is not available, which shows that the arrest of the detenu was not properly intimated to his family members.

6. Further, 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 09.12.2019 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. 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 was a delay of ten days, after excluding the Government Holidays of seven days, in considering the petitioner's 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 the Apex Court has observed and held that it is for the Authority concerned to explain the delay, if any, in disposal of the representation and if any delay was caused on account of nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

8. In the case on hand, as stated supra, the delay of ten 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 non-availability of proof for intimation of arrest of the detenu to his sister and delay in considering the petitioner's representation by following the decision 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 C.No.30/Detention/C.P.O/T.C/2019 dated 30.11.2019, is set aside. Consequently, the detenu, namely, Mohammed Rafi, son of Allah Baksh, aged about 32 years, who is now detained at Tiruchirappalli Central Prison, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

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.



To:

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli City, Tiruchirappalli.
- 3.The Superintendent of Prison,
Trichirappalli Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort Saint George,
Chennai -09.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1333 of 2019
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