



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2020

CORAM:

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

H.C.P. (MD) No.1380 of 2019

Arumugam

... Petitioner/Detenu

-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,
Madurai City, Madurai.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records connected with the detention order of the respondent No.2 in No.101/BCDFGISSSV/2019 dated 19.12.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Arumugam son of Vellaichamy aged about 25 years now confining as "Goonda" at Madurai Central Prison before this Court and set him at liberty forthwith.

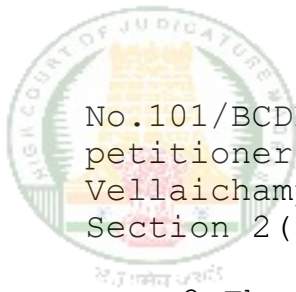
For Petitioner : Mr.R.Alagumani

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The present Habeas Corpus Petition has been filed to assail the detention order passed by the second respondent in
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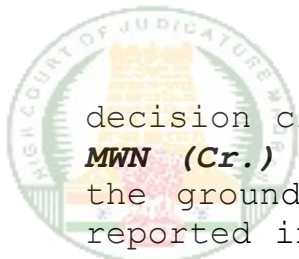
No.101/BCDFGISSSV/2019 dated 19.12.2019, wherein the petitioner/detenu, namely, Arumugam aged about 25 years son of Vellaichamy has been detained as 'Goonda' as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2. Though several grounds have been raised to assail the detention order, Mr.R.Alagumani, learned counsel for the petitioner confines his arguments on the grounds of delay in passing the order of detention from the date of arrest of the detenu and lack of application on the part of the detaining authority in passing the impugned order. It is submitted that the detenu was arrested in the ground case on 06.11.2019, but the detention order came to be passed only with the delay of 43 days i.e., on 19.12.2019. According to the learned counsel, there is no live link between arrest of the petitioner and the order of detention. In this regard, the learned counsel placed on a decision reported in **2018(2) MWN (Cr.) 207 (Malarkodi vs. Principal Secretary to Government)**. He further added that the detenu is having one adverse case registered in the year 2017 for the offence under Section 302 IPC and his bail application in the ground case was dismissed by the learned Judicial Magistrate No.IV, Madurai and the learned Principal Sessions Judge, Madurai on 12.11.2019 and 09.12.2019 respectively and his bail petition is pending for consideration before the High Court in Crl.O.P(MD)No.19004 of 2019, but the detaining authority to arrive at subjective satisfaction, has relied on the bail granted in some other case to one Manikandan by this Court in Crl.O.P(MD) No.8031/2017 on 29.06.2017. It is submitted that the similar case relied on by the detaining authority is not to the similar case of the detenu. Therefore, on both the grounds, the order of detention is liable to be quashed.

3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents while reiterating the counter affidavit filed by the second respondent would contend that the detention order has been passed based on the cogent materials placed by the sponsoring authority and there is no illegality or irregularity in the order of detention. It is further stated that admittedly the bail petition is pending before the High Court and the detaining authority relied upon the bail granted by this Court in similar case and hence, he prayed for dismissal of the Habeas Corpus Petition.

4. We have heard the rival submissions and perused the materials available on records.

5. In the matter on hand, it is not in dispute that the detenu was detained by the order of the second respondent dated 19.12.2019 and for the ground case, he was arrested as early as on 06.11.2019. Between 06.11.2019 and 19.12.2019, there is a delay of 45 days and the said delay has not been properly explained. This Court, in the



decision cited by the learned counsel for the petitioner in **2018(2) MWN (Cr.) 207 (cited supra)**, has set aside the detention order on the ground of delay by following the earlier order of this Court reported in **2005 MLJ (Cr1.) 752 (Ramesh vs. District Collector and District Magistrate, Tiruchirappalli District and another)**.

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6.As rightly pointed out by the learned counsel for the petitioner, in the similar case referred by the detaining authority viz., Cr1.O.P(MD)No.8031 of 2017, the accused in that case was acquitted in all the previous cases registered against him. But in this case, final report has been laid in the adverse case and it is pending trial and the ground case is under investigation. Perusal of facts narrated in the similar case at paragraph 251 of the booklet and this case are totally different. Therefore, we are of the considered opinion that the subjective satisfaction arrived at by the detaining authority is not based on the cogent materials, which shows lack of application of mind on the part of the detaining authority.

7.For the forgoing reasons, we are of the considered opinion that the detention order impugned in this habeas corpus petition is liable to be quashed on both the grounds as stated supra.

8. In fine, the order of detention passed by the second respondent, in No.101/BCDFGISSSV/2019 dated 19.12.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Arumugam son of Vellaichamy aged about 25 years now detained at Central Prison, Madurai is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

skn

Note :

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



To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
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Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Joint Secretary to Government,
Public (Law & Order) Fort St.George,Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1380 of 2019
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AP(12/08/2020) 4P 6C