



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2020

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and**

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1374 of 2019

Suthakar

... Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Chennai - 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Theni District.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai 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 second respondent in detention order No.29/2019/C3, dated 19.12.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Suthakar, son of Mathialagan, aged about 34 years, now detained as "Drug Offender" 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.)

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 Suthakar, son of Mathialagan, aged about 34 years,
<https://hcservices.courts.gov.in/Hcservices/>



challenging the detention order in No.29/2019/C3, dated 19.12.2019, passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of the Tamil Nadu Act 14 of 1981.

3.The learned Counsel for the petitioner Mr.R.Alagumani, mainly contended that the subjective satisfaction reached by the Detaining Authority is without any basis and the representation of the petitioner was not considered by the authorities on time and on these two grounds the impugned order is liable to be set aside.

4.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, while reiterating the averments in the counter affidavit filed by the second respondent, submitted that the adverse cases are similar in nature and after satisfying with the cogent and relevant materials furnished by the Sponsoring Authority, the second respondent has rightly passed the detention order and there is no illegality or infirmity in the detention order. It is further stated that the delay in considering the representation caused no prejudice to the detenu and hence, prayed for dismissal of the Habeas Corpus Petition.

5. In the matter on hand, it is seen that the detenu was arrested on 05.12.2019 in the ground case and remanded to Judicial custody till 02.01.2020. It appears that the detenu filed a bail petition in the ground case in Cr.M.P.No.4948/2019 and the same is pending for consideration before the Special Court for EC/NDPS Act cases, Madurai. However to arrive at the subjective satisfaction, the Detaining Authority has stated that bails are granted by the competent Courts after lapse of time. Therefore, there is a possibility for the detenu to come out on bail.

6. It is rightly pointed out by the learned counsel appearing for the petitioner that no material is available to show that the detenu is likely to be released on bail. Therefore, the conclusion reached by the Detaining Authority shows lack of non-application of mind on the part of the Detaining Authority.

7.The proforma circulated by the learned Additional Public Prosecutor would show that the detention order was passed on 19.12.2019, against that the detenu preferred a representation for revocation of the order on 26.12.2019 and the same was received by the respondents on 30.12.2019 and remarks were received from the Sponsoring Authority on 14.01.2020. Eventually, the representation was rejected on 23.01.2020. In between 30.12.2019 and 14.01.2020, there was a delay of 14 days and after excluding the five days of Government Holidays, the delay of 9 days was not explained by the respondents. It is settled law that the unexplained delay would vitiate the order of detention.

8. At this juncture, it is useful to refer the decision of the Honourable Apex Court in the case of **T.V.Sravanan Alias**



S.A.R.Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and another, reported in (2006) 2 SCC 664, wherein it is held as follows:

"14.We are satisfied that for the same reason the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the Courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, no sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated December 13, 2005."

9. Considering the above facts and also taking note of the principal laid down in the above decision, we are of the opinion that the detention order impugned in this habeas corpus petition has been passed without any iota of material and it shows non-application of mind on the part of the Detaining Authority while passing the detention order and hence, the impugned detention order is liable to be set aside.

10. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent in Detention Order No.29/2019/C3, dated 19.12.2019, is set aside. Consequently, the detenu, namely, Suthakar, son of Mathialagan, aged about 34 years, who is 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.

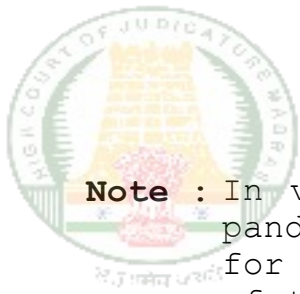
Sd/-

Assistant Registrar (AS)

// 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,
Home, Prohibition and Excise Department
Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Theni District.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai 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.1374 of 2019
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