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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.12.2020

Pronounced on : 07.12.2020

CORAM:

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

H.C.P. (MD) No.1372 of 2019

Kishan Paul Singh

... Petitioner/Brother-in-law of the detenu

-vs-

- 1.The Chief Secretary to Government of Tamil Nadu,
Public (Law and Order-F) Department,
Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli City, Tiruchirappalli.
- 3.The Secretary to Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block, New Delhi - 110 001.
- 4.The Superintendent of Prison,
Trichy Central Prison,
Trichy.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order of the respondent No.2 in C.No.1/NSA/Detention/CPO/TC/2019 dated on 10.12.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Bhansingh Thakur, son of Rahunath Singh Thakur aged about 47 years, now confining at Trichy Central Prison before this Court and set him at liberty forthwith.



For Petitioner : Mr.R.Alagumani
For Respondents : Mr.K.Chellapandian
Addl. Advocate General assisted by
Mr.K.Dinesh Babu
Additional Public Prosecutor (for R1, R2 & R4)
Mr.K.Prabhu
Central Govt. Standing Counsel (for R3)

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O R D E R

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

This habeas corpus petition has been filed challenging the detention order passed by the second respondent dated 10.12.2019 in C.No.1/NSA/Detention/CPO/TC/2019, wherein the brother-in-law of the petitioner, namely, Bhansingh Thakur, son of Rahunath Singh Thakur has been branded as 'Anti Social Element'.

2.Mr.R.Alagumani, learned counsel for the petitioner would argue that though several grounds have been raised to assail the detention order impugned in this habeas corpus petition, he confines his arguments only on two grounds. Firstly, there is inordinate and unexplained delay in disposal of the representation which violates the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India. Secondly, the detention order passed under National Security Act can be revoked by the Central and State Governments. However, the failure on the part of the detaining authority to inform the detenu that he is having right to make a representation to the Central Government resulted in deprivation of valuable right of the detenu in making effective representation for revocation of the order of detention. In this regard, the learned counsel relied upon the decision of the Hon'ble Apex Court in **(1995) 4 SCC 51 (Kamleshkumar Ishwardas Patel vs. Union of India)**.

3.Per contra, Mr.K.Chellapandian, learned Additional Advocate General assisted by Mr.K.Dinesh Babu, would argue that the detenu is involved in two criminal cases and the allegations against him are serious in nature. According to the learned Additional Advocate General, the detenu is a supplier of unlicensed pistols to extremist groups in South India. It is the contention of the learned Additional Advocate General that gun culture developed in Tamil Nadu because of the activities of the person like the detenu. He further added that the detention order has been rightly passed by the detaining authority, the second respondent herein on being satisfied with the materials furnished by the sponsoring authority. The learned Additional Advocate General drawing attention of this Court to the counter filed by the second respondent, submitted that there is no delay in disposal of the representation and the right of the



detenu to make a representation to the Central Government is also mentioned in the detention order, therefore, there is no illegality in the impugned order.

4.Mr.K.Prabhu, learned Central Government Stating Counsel, while reiterating the counter filed by the third respondent, submitted that the detention order was approved by the State Government and immediately it was sent to the Central Government on 19.12.2019 and it was received on 30.12.2019 and on the very next day, the Central Government approved the view of the State Government. It is the submission of the learned standing counsel that there is no separate representation received from the detenu.

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

6.Perusal of the counter affidavit filed by the second respondent would indicate that aggrieved over the detention order passed by the second respondent dated 10.12.2019, a representation dated Nil was received by the first respondent on 06.01.2020 and the same day, remarks were called for from the sponsoring authority and it was received by the sponsoring authority on 07.01.2020. Remarks sent to the Government on 07.01.2020 and the rejection letter was prepared on 30.01.2020. In the *pro forma* furnished by the learned Additional Advocate General shows that remarks sent to the Government dated 07.01.2020 was received only on 22.01.2020. The circulation note was put up on 23.01.2020. The Deputy Secretary dealt with the matter on 24.01.2020. The Principal Secretary dealt with the matter on 27.01.2020 and the Secretary to Government dealt with the matter on the same day. The Chief Secretary to Government considered the representation on 28.01.2020 and eventually, the Hon'ble Minister of Law on 29.01.2020 and by the Hon'ble Chief Minister on 30.01.2020 and the rejection order was prepared on 30.01.2020.

7.The facts narrated in the counter affidavit and the *pro forma* circulated by the respondents would show that there is enormous and unexplained delay in disposal of the representation of the detenu. Though the sponsoring authority sent remarks to the Government on 07.01.2020, it was received only on 22.01.2020, there is absolutely no explanation for the delay between 07.01.2020 to 22.01.2020. Therefore, we are of the view that the delay has not been properly explained by the respondents either in the counter affidavit or during the arguments.

8.In paragraph 5 of the detention order, though it has been stated that the detenu has a right to make representations to the State Government; to the Chairman, Advisory Board and to the Central



Government, it is not specifically stated that he is entitled to make a representation to the Central Government. But it is mentioned that if the detenu wishes to make a representation to the Central Government, he may address to the Secretary, Government of India, Ministry of Home Affairs. In decision cited by the learned counsel for the petitioner in **(1995)4 SCC 51** (cited supra), the Constitution Bench of the Hon'ble Supreme Court, while considering the similar issue, has observed as follows:-

"47. In both the appeals the orders of detention were made under Section 3 of the PIT NDPS Act by the officer specially empowered by the Central Government to make such an order. In the grounds of detention the detenu was only informed that he can make a representation to the Central Government or the Advisory Board. The detenu was not informed that he can make a representation to the officer who had made the order of detention. As a result the detenu could not make a representation to the officer who made the order of detention. The Madras High Court, by the judgments under appeal dated 18.11.1994 and 17.01.1994, allowed the writ petitions filed by the detenus and has set aside the order of detention on the view that the failure on the part of the detaining authority to inform the detenu that he has a right to make a representation to the detaining authority himself has resulted in denial of the constitutional right guaranteed under Article 22 (5) of the Constitution. In view of our answer to the common question posed the said decisions of the Madras High Court setting aside the order of detention of the detenus must be upheld and these appeals are liable to be dismissed.

9.A Division Bench of this Court in the case of **Tmt.Chakkrathai vs. State of Tamil Nadu** reported in **1997(II) CTC 428**, took a view that failure to mention in the order of detention about the detenu's right to make a representation to the Central Government has caused prejudice to the valuable right of the detenu following the decision of the Hon'ble Apex Court referred above. The relevant paragraphs of the said Judgements read as follows:-

"8. In **Kamaleshkumar Iswardas Patel v. Union of India**, 1995 SCC (Cr1.) 643, at para 47, the Supreme Court has held that failure on the part of the detaining authority to inform the detenu that he has a right to make representation to the detaining authority himself has resulted in denial of a constitutional right guaranteed under Article 22(5) of the Constitution. In **Nutan J. Patel v. S.V. Prasad and Anr.**, 1996 SCC (Cr1.) 269, the Apex Court has reiterated the same view and set aside the order of detention.



9. The right to make representation against the detention flows from the constitutional guarantee enshrined in Article 22(5). It casts an obligation on the authority to ensure that the detenu is afforded an earliest opportunity to exercise that right, if he so desires. Once it is realised that Article 22(5) confers a right of representation, the next question is to whom must the representation be made. The grounds of detention clearly informed the detenu that he can make representation to the State Government, the Central Government as well as the Advisory Board. There can be no doubt that the representation may be made to the authority which has the power to rescind or revoke the decision if need be. Under Article 22(5), therefore, it has to be construed to mean that the person detained has a right to make representation against the order of detention not only to the Advisory Board, but also to the detaining authority, i.e., the authority that has made the order of detention or ordered for continuance of such detention, which is competent to give immediate relief by revoking the said order, as well as any other authority which is competent under law to revoke the order of detention and thereby give relief to the person detained. The right to make representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make representation against the order of detention to the authorities who are required to consider such representation.

10. When Section 14 of the Act contemplates revocation of detention orders by the Central Government, having not mentioned the same in the grounds that the detenu has a right to make representation to the Central Government, the right of the detenu to make effective representation has been prejudiced, which results in vitiating the order of detention. Thus, we answer the question holding that the non-information as to the right of representation to the Central Government invalidates the order."

10. In the light of the decisions of the Hon'ble Apex Court and this Court referred above, we are of the view that the impugned detention order is liable to be set aside. Accordingly, the order of detention passed by the second respondent, in C.No.1/NSA/Detention/CPO/TC/2019 dated 10.12.2019 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Bhansingh Thakur, son of Rahunath Singh Thakur aged about 47 years, now detained at Trichy 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 (CO)

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Sub Assistant Registrar(CS)

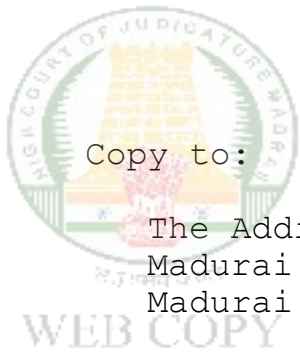
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Note :

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 Secretary to Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block, New Delhi - 110 001.
- 2.The Chief Secretary to Government of Tamil Nadu,
Public (Law and Order-F) Department,
Secretariat,
Chennai - 600 009.
- 3.The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli City, Tiruchirappalli.
- 4.The Superintendent of Prison,
Trichy Central Prison,
Trichy.
- 5.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai-9.



H.C.P.(MD) No.1372 of 2019

Copy to:

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in

H.C.P. (MD) No.1372 of 2019

07.12.2020

SRK (CO)

NR (05/01/2020) 7P : 7C