

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2021

Coram

The Hon'ble Mr. Justice T.RAJA  
and  
The Hon'ble Mr. Justice G.CHANDRASEKHARAN

H.C.P. No. 1702 of 2020

Menaka

... Petitioner

Vs

1. The Principal Secretary to Government,  
Home, Prohibition and Excise Department,  
St. George Fort,  
Chennai - 600 009.
  2. The District Collector and District Magistrate,  
Tiruvannamalai District,  
Tiruvannamalai.
  3. The Superintendent of Police,  
O/o. Superintendent Office,  
Tiruvannamalai,  
Tiruvannamalai District.
  4. The Superintendent of Prison,  
Central Prison, Vellore,  
Vellore District
  5. State rep. by the Inspector of Police,  
Kilpennathur Police Station,  
Tiruvannamalai District.
- ... Respondents

Petition filed under Article 226 of the Constitution of India praying to call for the entire records relating to the petitioner's brother detained under Tamil Nadu Act 14 of 1982 vide Detention Order, dated 11.09.2020 on the file of the 2<sup>nd</sup> respondent herein made in Proceedings D.O.No.96/2020-C2, quash the same as illegal and consequently, direct the respondent herein to produce the petitioner's brother, namely, Magesh @ Mageshkumar, S/o.Ramesh, aged 21 years before this Court and set the petitioner's brother at liberty from detention who is now detained at Central Prison, Vellore.

For Petitioner : Mr.Vijaya Rajan  
for Mr.R.Sasikumar

For Respondents: Mr.R.Prathap Kumar,  
Addl.Public Prosecutor

ORDER

[Order of the Court was made by T.RAJA, J.]

The matter was listed before this Court today in the Additional List in view of the urgency expressed by the petitioner through e-mail to the Registrar (Judicial) that the mother of the detenu passed away on 13.03.2021 whose presence is required for performing her last rituals.

2. The petitioner is the sister of the detenu, Magesh @ Mageshkumar, S/o.Ramesh, aged about 21 years. The detenu has been detained by the second respondent by his order in D.O.No.96/2020-C2 dated 11.09.2020 holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

3. Though several grounds have been raised in the Habeas Corpus Petition, learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay of 60 days. Since the respondents herein have deliberately sat on the representation of the petitioner presented on 23.09.2020, non-consideration of the representation for a long time without any justification would amount to violation of the life and liberty guaranteed under Article 21 of the Constitution of India. Besides, in Sumaiya vs. The Secretary to Government (2007 (2) MWN (Cr.) 145), a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention. In the present case, there was no any explanation offered by the respondents for non-consideration of the representation for 60 days. Learned Counsel for the petitioner would also submit that the mother of the detenu, namely, Kaveri, aged about 45 years, died on 13.03.2021, while drowning in a lake and due to the death of the detenu's mother, the detenu is in pious obligation to perform last rites by being present in the family. Therefore, the presence of the detenu, is required to perform the last rituals of his mother.

4. In reply, learned Additional Public Prosecutor submitted that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed, inasmuch as, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India. The learned Additional Public Prosecutor further submitted that the Detention Order in question was passed on 11.09.2020. The petitioner made a representation on 21.09.2020 and the same was received on 23.09.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 23.09.2020. The remarks were duly received on 12.11.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 23.11.2020 and the same was sent to the detenu on 24.11.2020.

5. It is the contention of the petitioner that there was a delay of 49 days in submitting the remarks by the Detaining Authority, of which 13 days were Government Holidays and hence there was an inordinate delay of 36 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 12.11.2020 and there was a delay of 11 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 3 days were Government Holidays, hence, there was inordinate delay of 8 days in considering the representation.

6. Heard the parties on both sides. We have also perused the records produced by the Detaining Authority.

7. The District Collector, the 2<sup>nd</sup> respondent being the District Magistrate, considering the request made by the 5<sup>th</sup> respondent, namely, the Inspector of Police, Kilpennathur Police Station, Tiruvannamalai District, to place the detneu as 'Goonda' on the ground that there are three adverse cases and one ground case against him, has passed the impugned order of detention under Sub-Section 2(b) of the Tamil Nadu Act 14 of 1982 on 11.09.2020 in Proceedings D.O.No.96/2020-C2. A perusal of the detention order reveals that on 14.03.2020 at 18.30 hours, when Mr.Tamilarasu, Sub-Inspector of Police, Kilpennathur Police Station, along with his police party conducted prohibition raid towards Mekkalur Village, during the said raid they found the detenu with 55 litres of illicit arrack. Therefore, a case was registered in Kilpennathur Police Station Cr.No.98/020 under Sections 4(1-A) (ii) TNP Act, 1937 against the detenu and he was arrested and remanded to judicial custody on 06.06.2020 and now the case is pending trial before the learned Judicial Magistrate No.II, Tiruvannamalai. Secondly,

again when Tmt.Mahalakshmi, Inspector of Police, Kilpennathur Police Station along with police party on 06.06.2020 at 09.30 hours conducted prohibition raid towards Mekkalur Village, at that time they found the detenu with 110 litres of illicit arrack. Again, second adverse case has been registered against him in Kilpennathur Police Station Cr.No.1231/2020 under Section 4(1)(aaa) read with 4(1-A) (ii) TNP Act, 1937 on 06.06.2020. On the same day, he was produced before the learned Judicial Magistrate No.II, Tiruvannamalai and remanded to judicial custody. Thereafter, on 25.6.2020 at 12.30 hours, the same Inspector of Police Mrs.Mahalakshmi along wither her police party conducted prohibition raid towards Mekkalur Vilage and they found 110 litres of illicit arrack with the detenu and on the same date, he was arrested and remanded to judicial custody in the third adverse case in Kilpennathur Police Station Crl.No.1449/2020 under Section 4(1)(aaa) read with 4(1-A) (ii) TNP Act, 1937. Later on, the detenu was granted bail by the orders of the learned Principal District and Sessions Judge, Tiruvannamalai in Crl.M.P.No.6/2020 dated 23.3.2020, Crl.M.P.No.1393/2020 dated 11.06.2020 and Crl.M.P.No.1793/2020 dated 01.07.2020 in all the three adverse cases. Thereafter, it appears that one victim Masilamani, S/o.Ramachandran made a complaint on 17.08.2020 at 10.30 hours alleging that the detenu was selling illicit arrack at Mananthangal Lake Bund and based on his complaint, when a raid was made, the detenu was found selling illicit arrack. Thereafter, the first ground case has been registered based on which the District Collector has passed the impugned detention order, detaining him as Goonda in Proceedings D.O.No.96/2020-C2 dated 11.09.2020.

8. Since on the basis of three adverse cases and one ground case, Act 14 has been invoked against the detenu, a representation has been given on 21.09.2020 by the petitioner, sister of the detenu and the same was received on 23.09.2020. But, it reveals that the said representation has not been considered timely. It has been well settled legal position that as and when any representation has been made by the detenu, the same has to be immediately considered and the same has to be disposed of on merits. But in the present case, when there has been a delay of 60 days, excluding 14 intervening holidays, we are able to find unexplained 46 days of delay. Nowhere any explanation whatsoever has been shown before us. No counter affidavit has also been filed by the respondents. Therefore, the non-consideration of the representation by the detaining authority would vitiate the life and liberty of the citizen guaranteed under Article 21 of the Constitution of India as held by the Hon'ble Apex Court in Jayanarayanan Sukul vs. State of West Bengal reported in 1970 AIR 675. In this regard, it is useful to extract the relevant paragraph here under:

'B) In Jayanarayan Sukul, the reason for immediate consideration of the representation was stressed in para 18 as under:

The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities. Thereafter four principles that must be followed in regard to consideration of the representation of a detainee were dealt with in paragraph 29: the second principle being:

Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. It was thus stated that the consideration of the representation must be entirely independent of the action of the Advisory Board."

9. That apart, in *Rekha vs. State of Tamil Nadu* (2011 (5) SCC 244), the Honourable Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

10. In *Tara Chand vs. State of Rajasthan and others*, reported in 1980 (2) SCC 321, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 36 days in submitting the remarks by the Detaining Authority and unexplained delay of 8 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. Therefore, we are unable to sustain the impugned order of detention. The impugned detention order is, therefore, liable to be quashed.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in No. D.O.No.96/2020-C2 dated 11.09.2020 passed by the second respondent is set aside. The detenu, namely, Magesh @ Mageshkumar, S/o.Ramesh, aged about 21 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government,  
Home, Prohibition and Excise Department,  
St. George Fort,  
Chennai - 600 009.
2. The District Collector and District Magistrate,  
Tiruvannamalai District,  
Tiruvannamalai.
3. The Superintendent of Police,  
O/o. Superintendent Office,  
Tiruvannamalai,  
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Central Prison, Vellore,  
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5. The Inspector of Police,  
Kilpennathur Police Station,  
Tiruvannamalai District.
- 6.The Public Prosecutor,  
High Court, Madras.

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GSM[CO]  
SRG 15/03/2021