



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.113 of 2021

G.Balammal

... Petitioner

-vs-

1.State of Tamil Nadu,
Represented by the Additional Chief
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3. The Superintendant of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... 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 passed in H.S. (M) Confdl No.01/2021 dated 02.01.2021 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son i.e., Arumugapandi, aged about 35 years, S/o. Gomathipandian, now detained at the Central Prison, Palayamkottai, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.S.Ravi
Standing counsel for the State



O R D E R

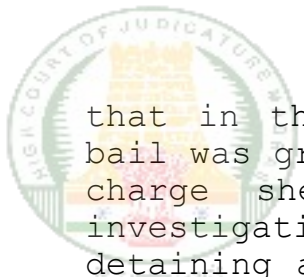
(Order of the Court was made by J.NISHA BANU, J.)

This Habeas Corpus Petition has been filed by the Mother of the detenu, namely, Arumugapandi, S/o.Gomathipandian, aged about 35 years, challenging the detention order in H.S.(M) Confdl No.01/2021, dated 02.01.2021, passed by the second respondent, branding him as "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Mr.N.Pragalathan, the learned counsel appearing for the petitioner assails the detention order mainly on the following grounds:-

(i).The subjective satisfaction arrived at by the detaining authority is vitiated and the same cannot be sustained, as when there is no bail application pending in the remanded cases, there is no imminent possibility of release of detenu on bail; (ii) the documents relied by the detaining authority as similar case, is no way similar to the detenu's case; (iii) Non-application of mind on the part of the detaining authority, as the detaining authority failed to discuss about the adverse cases in the grounds of detention; (iv) The arrest of detenu is not properly intimated, which is against the dictum laid down by the Hon'ble Apex Court; (v) the detaining authority while passing the detention order has relied upon a similar order, which was in English, since the detenu does not know English, he is not in a position to understand the same, which affects the right of giving effective representation to the detaining authority; (vi) If the apprehension of the detaining authority that in case, the detenu was released on bail, he would again indulge in criminal activities is true, the bail application had to be opposed and in case, the bail was granted, it has to be challenged by the authorities in the higher forum; (vii) The Tamil and English version of the grounds of detention and the booklet differs, which clearly discloses that the detaining authority mechanically passed the detention order. (viii) Since several pages are illegible in the paper book, the detenu did not able to understand the same and prefer effective representation; (ix) Section 10 of the Act 14 of 1982 reads that the 1st respondent shall place all relevant documents relating to the detention order before the Advisory Board within three weeks from the date of detention. No cogent materials reveals that on which date, the 1st respondent place all documents before the Advisory Board; and (x) there was a delay in considering the representation of the petitioner.

3.The learned counsel for the petitioner state that though above grounds have been raised to assail the order of detention, the petitioner is entitled to succeed on the ground of non-application of mind of the part of the detaining authority. He further added



that in the similar case referred to by the detaining authority, bail was granted on the ground that investigation was completed and charge sheet has been filed. But, in the case on hand, investigation is pending. Hence, the similar case relied on by the detaining authority to arrive at the subjective satisfaction is not similar to the case of the detenu. According to the learned counsel, this shows non-application of mind on the part of the detaining authority while arriving at the subjective satisfaction.

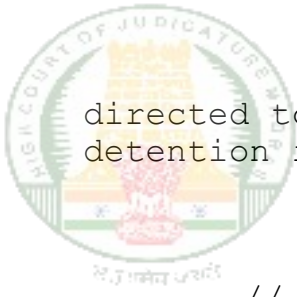
4.The learned Standing Counsel appearing for the respondents would state that after satisfying with the materials placed by the sponsoring authority, the detaining authority has passed the impugned detention order and therefore, there is no infirmity or illegality in the same. He would produce the proforma regarding the disposal of the petitioner's representation and would state that even if there is any delay in disposal of the petitioner's representation, it has not caused any prejudice to the rights of the detenu. Thus, he would pray for dismissal of this petition.

5.Heard the learned counsel for the petitioner as well as the respondents.

6.Perusal of the proforma produced by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner has made a representation to the 1st respondent on 18.01.2021 which was received on 22.01.2021. Remarks on the said representation were called for on 22.01.2021 and it was received on 29.01.2021. The Deputy Secretary concerned has dealt with the representation on 01.02.2021 and the Hon'ble Minister concerned has dealt with the representation on 04.02.2021 and finally, the representation came to be rejected on 08.02.2021. It is seen that in between 22.01.2021 and 29.01.2021, there was a delay of 7 days and after excluding 5 Government Holidays, there was a delay of 2 days in the first part and in between 01.02.2021 and 04.02.2021, there is a delay of 4 days and after excluding 2 Government Holidays, there was a delay of 2 days in the second part, in total, there was a delay of 4 days, in considering the petitioner's representation.

7. Perusal of record shows that while arriving at the subjective satisfaction, the detaining authority has referred to the similar bail order. In the similar case referred to by the detaining authority, the investigation has been completed and charge sheet has been filed. But in the present case, investigation is still pending. So we are of the view that the similar case relied on by the detaining authority is not similar to the case of detenu. This shows lack of application of mind on the part of the detaining authority while arriving at the subjective satisfaction. Hence, the detention order is liable to be set aside.

8.In fine, the Habeas Corpus Petition is allowed. The detention order in H.S.(M) Confdl No.01/2021, dated 02.01.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Arumugapandi, S/o.Gomathipandian, aged about 35 years, now detained at Central Prison, Palayamkottai, 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)

// True Copy //

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/ /2021

Sub Assistant Registrar(CS)

mpk

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 Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendant of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort St. George,
Chennai - 600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.113 of 2021

DATED : 16.08.2021

MGJ(07.09.2021) 4P 6C