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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P. (MD) No.178 of 2021

Revathi ... Petitioner / Wife of the Detenue
-vs-

1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

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

3.The Superintendent of Prison,
Central Prison,
Tiruchirapalli.

... 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 records pertaining to the impugned detention order passed by the second respondent made in his proceedings in P.D.No.4/2021, dated 19.01.2021 in detaining the detenu under Section 2(b) of the Tamil Nadu Act, 14 of 1982 as a Boot-Legger and quash the same and direct the respondents to produce the detenu namely Babu, S/o. Natarajan, Male, aged about 35 years, who is detained in Central Prison, Tiruchirapalli, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

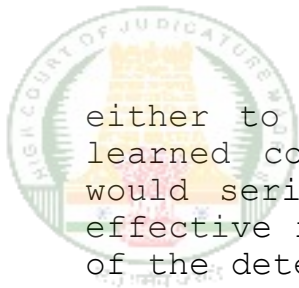
For Respondents : Mr.S.Ravi,
Standing counsel for the Government

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This habeas corpus petition has been filed by the wife of the detenu, namely, Babu, S/o. Natarajan, aged about 35 years, against the detention order passed by the second respondent, in P.D.No.4/2021, dated 19.01.2021 branding him as "Boot-Legger" as contemplated under Section 2(b) of the Tamil Nadu Act, 14 of 1982.

2. It is submitted by Mr.K.M.Karunakaran, learned counsel for the petitioner that he has assailed the Detention Order on two grounds, firstly, the detention order is liable to be set aside on the ground that there was no intimation of arrest of the detenu



either to his family members or his relatives. According to the learned counsel for the petitioner, the non-intimation of arrest would seriously affect the valuable rights of the detenu to make effective representation to the Authorities concerned for revocation of the detention order.

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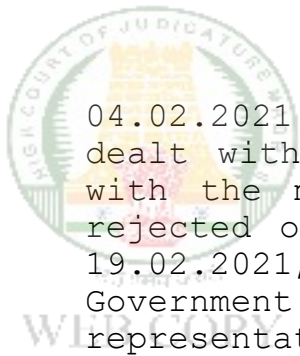
3. Secondly, the learned counsel submitted that the detention order is liable to be set aside on the ground of delay in disposal of the petitioner's representation. It is submitted by the learned counsel for the petitioner that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India have not been followed in this case and there is unexplained and inordinate delay in disposal of the petitioner's representation, which would vitiate the impugned order of detention.

4. Per contra, Mr.S.Ravi, learned counsel appearing for the respondents, would submit that the detention order has been passed by the Detaining Authority after satisfying with the materials placed by the Sponsoring Authority and there is no illegality or irregularity in the impugned detention order. Furthermore, the intimation of arrest of the detenu was given through SMS and hence, the rights of the detenu has not been affected in any manner. It is also stated that even if there is any delay in disposal of the representation, it has not caused any prejudice to the rights of the detenu and hence, prayed for dismissal of the habeas corpus petition.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. A perusal of the arrest intimation form available at Page No.118 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell Number. However, there is no material to show that the said Cell Number belongs to the family members of the detenu or his relatives and the text of the message is also not found place in the booklet. This Court, following the decision of the Honourable Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**, in several cases, has consistently held that if there is no proper intimation of arrest of the detenu either to his family members or his relatives, his valuable rights would seriously prejudiced on the sense that they will not have the opportunity to make effective representation to the Authority concerned in time for revocation of the detention order.

7. Further, in the instant case, the pro-forma furnished by the learned Standing counsel would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 30.01.2021 and it was received on 04.02.2021. Remarks were called for on the same day ie., on



04.02.2021 and it was received on 19.02.2021. The Deputy Secretary dealt with the matter on 22.02.2021. The concerned Minister dealt with the matter on 27.02.2021 and the representation came to be rejected on 27.02.2021. It is seen that in between 04.02.2021 and 19.02.2021, there was a delay of 10 days, after excluding the Government Holidays of 4 days, in considering the petitioner's representation.

8. At this juncture, it is useful to refer the decision of the Honourable Apex Court in the case of ***Rajammal vs. State of Tamil Nadu and another***, reported in ***1999 (1) SCC 417***, wherein the Apex Court has observed and held that it is for the Authority concerned to explain the delay, if any, in disposal of the representation and if any delay was caused on account of nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

9. In the case on hand, as stated supra, the delay of 10 days in considering the representation of the petitioner has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside by following the decisions of the Honourable Apex Court referred supra.

10. In the light of the above facts and circumstances, we are convinced that the impugned detention order would not stand to the scrutiny of this Court and the same is, therefore, liable to be set aside.

11. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in P.D.No.4/2021, dated 19.01.2021, is set aside. Consequently, the detenu, namely, Babu, S/o. Natarajan, aged about 35 years, who is now detained at Central Prison, Tiruchirappalli, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

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To

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirapalli.
- 4.The Joint Secretary to Government,
Public(Law and order),
Fort St.George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.178 of 2021
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KK(23.06.2021) 4P 6C