



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2021

CORAM:

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P. (MD) No.279 of 2021

G.Vairamoorthy

... Petitioner

-vs-

1.The State of Tamil Nadu
rep.by Additional Chief Secretary
to Government
Home, Prohibition and Excise (XVI) Department
Secretariat, Fort St.George
Chennai-600 009

2.The District Collector and
District Magistrate
Thanjavur District

3.The Superintendent
Central Prison, Trichy

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus there by call for the entire record connected with the detention order of the second respondent in P.D.No.95/2020, dated 22.12.2020 and quash the same as illegal and direct the respondents to produce the body and person of the petitioner's son-in-law detenu by name Harish, son of Rajendran, aged about 22 years, residing at Anthonyiar Kovil Theru, Naduyambalpuram Vaikkal, Pattukkottai Taluk, Thanjavur District was detained as a "Goonda" at Central Prison, Trichy, before this Court and set him at liberty.

For Petitioner : Mr.Ganapathi Subramanian.P.

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor



O R D E R

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

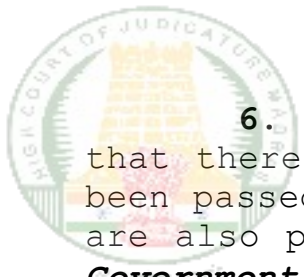
This habeas corpus petition has been filed by the uncle of the detenu, namely, Harish, son of Rajendran, aged about 22 years, against the detention order in P.D.No.95/2020, dated 22.12.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.

2. Though several grounds have been raised challenging the impugned detention order, Mr.P.Ganapathi Subramanian, learned counsel for the petitioner, would contend that the impugned order of detention is liable to be set aside on three grounds, namely, (i) lack of application of mind on the part of the Detaining Authority while passing the impugned order of detention (ii) arbitrary action taken by the Authorities for clamping the detention order only as against few accused, leaving the other accused, who are also similarly placed and (iii) failure of intimation of arrest of the detenu either to his family members or his relatives.

3. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, submitted that the detention order has been passed by the second respondent after arriving at the subjective satisfaction based on the cogent and relevant materials placed by the Sponsoring Authority and to prevent the detenu from indulging in similar activities in future. It is the further submission of the learned Additional Public Prosecutor that there is no illegality and irregularity in the impugned detention order and hence, prayed for dismissal of the habeas corpus petition.

4. We have heard the rival submissions and perused the materials placed on record.

5. In the instant case, the detenu has been arrayed as accused in the ground case for the offence of murder and the case was registered on 04.11.2020 and he was secured by the Police on 13.11.2020. The Detaining Authority has relied on a bail order granted to the accused Kurunthaiyan and others, by this Court, vide order dated 12.11.2013 in CrI.O.P.(MD) No.20102 of 2013, wherein bail was granted on the ground that the co-accused was enlarged on bail. But, in the present case, none of the accused have been released on bail. So, we are of the opinion that the similar case relied on by the Detaining Authority is not similar to the case of the detenu herein, which shows lack of application of mind on the part of the Detaining Authority while arriving at the subjective satisfaction.



6. Further, in the instant case, it is an admitted fact that there are totally 12 accused, however, detention orders have been passed only as against three accused, when nine other accused are also placed in same footing. In **Chandra v. The Secretary to Government [2010 (1) MWN (Cr.) 129]**, it has been held that the Authorities cannot exercise their power arbitrarily for picking and choosing only some of the accused to clamp the order of detention. The relevant paragraph would run thus:

"10. It is the further contention raised on behalf of the petitioners that the equal protection clause shall be attracted against the orders of preventive detention as well. But, this court is of the considered view that the equal protection clause cannot be stretched further to be made applicable for quashing the orders of detention for not assigning reasons in the grounds of detention for the exclusion of others and selection of the detenus alone when the detaining authority choses the persons among the accused in the ground case to be clamped with the order of detention under the preventive detention law. However, we are of the view that there is some force in the contention that the exercise of power by the detaining authority to pass orders of detention against the detenus concerned in these HCPs alone can be challenged as being arbitrary. The arbitrariness pointed out on behalf of the petitioners is that though the detaining authority chose to consider the detenus concerned in these HCPs alone as a class out of the nine accused persons, who were arraigned as such in the first and third adverse cases and the ground case, there was no reasonable basis for such a classification to treat them differently from the rest of the persons. The said argument has been advanced on the ground that no reason has been assigned in the grounds of detention for selecting the above said three persons alone for being termed as goondas. We are of the considered view that it shall not be necessary on the part of the detaining authority to assign any reason in the grounds of detention as to why the other persons are not chosen for being detained under the preventive detention law. Suffice to state the satisfaction that the detenus are to be termed goondas and their presence at large will be detrimental to the maintenance of public order. But the same does not mean that the court while dealing with HCP challenging the order of detention, cannot go into the question of arbitrariness in such classification. When the order of detention is challenged on the ground of arbitrariness based on the



classification of the detenus alone from the rest of the accused, it shall be the duty of the detaining authority and the State to establish reasonable basis of such classification to rule out arbitrariness. In this case, though the detaining authority cannot be found fault with for not assigning reason in the grounds of detention for selecting the detenus concerned in these HCPs alone for clamping the orders of detention leaving out the other accused in the ground case and the adverse cases, there is failure on the part of the respondents herein to state the basis of such classification atleast before the court in these HCPs. The failure on the part of the respondents to assign reasons in their counter affidavit in these petitions as to why the detenus alone were selected for detention as goondas leaving out the other six persons will show that the exercise of the statutory power by the detaining authority was arbitrary especially when the left out persons were placed on equal footing with Murugan and Murali, the detenus concerned in H.C.P.Nos.2393 and 2404 of 2009 and found implicated in more number of cases than Rajendran, the detenu concerned in H.C.P.No.2405 of 2009. Hence we are convinced that orders of detention challenged in these HCPs are vitiated on the ground of arbitrariness."

In this case also, no explanation has been given by the respondents for passing the detention order only against some of the accused, leaving the similarly placed accused.

7. Furthermore, in the case on hand, though it is contended by the learned Additional Public Prosecutor that the arrest of the detenu has been properly intimated to the family members of the detenu, a perusal of Page No.85 of the booklet would show that the arrest of the detenu in the ground case on 13.11.2020 was intimated to Cell No.9751020054, but there is nothing on record to show that said cell number belongs to the family members or relatives of the detenu. 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 be 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.

8. Hence, in our considered view, the detention order is liable to be set aside on the grounds as stated above by following the decisions cited supra.



9. In fine, the Habeas Corpus Petition is allowed. The order of detention in P.D.No.95/2020, dated 22.12.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Harish, son of Rajendran, aged about 22 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.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

KRK

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,
Home, Prohibition and Excise (XVI Department,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The District Collector and
District Magistrate,
Thanjavur District.
- 3.The Superintendent,
Central Prison, Trichy.



4.The Joint Secretary to Government,
Public(Law and Order),
Fort.St.George,
Chennai-600 009.

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

H.C.P. (MD) No.279 of 2021
26.03.2021

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