**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	25.01.2021
Date of Judgment	15.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**AND****THE HONOURABLE MR.JUSTICE G.ILANGO VAN****HCP(MD)No.314 of 2020**

Muthumari : Petitioner/Wife of the Detenu

Vs.

1.State of Tamil Nadu,
Rep by its Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Chennai-9.

2.The Commissioner of Police,
Madurai City,
Madurai.

3.The Superintendant,
Central Prison,
Salem.

: Respondents

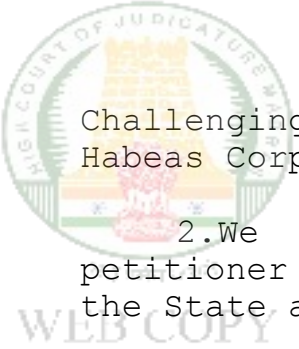
Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records of the 2nd respondent in Detention Order No.08/BCDFGISSSV/2020, Dated 03.05.2020 and quash the same and set the petitioner's husband by name "Raja @ Appala Raja @ Rajeshkumar, S/o.Mahalingam, aged about 35 years" at liberty from the 3rd respondent.

For Petitioner : Mr.R.Sankara Subbu

For Respondents : Mr.K.Chellapandian
Addl. Advocate General
Assisted by
K.Dinesh Babu
Additional Public Prosecutor

O R D E R(Order of the Court was made by **G.ILANGO VAN, J**)

The petitioner is the wife of the detenu namely Raja @ Appala Raja @ Rajeshkumar, aged 35 years. The detenu has been detained under the Tamil Nadu Act 14 of 1982, as per the order of the 2nd respondent, in his proceedings in Detention Order No.08/BCDFGISSSV/2020, dated 03.05.2020, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.



Challenging the same, the petitioner is before this court with this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Advocate General appearing for the State and also perused the materials available on record.

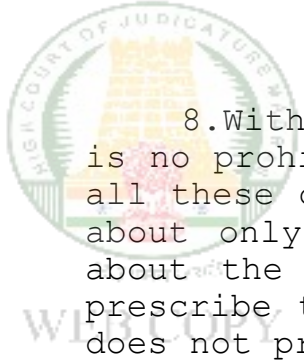
3. Even though the learned counsel appearing for the petitioner raised various grounds assailing the order of detention, the main ground raised on the side of the petitioner is that the detenu was alleged to have involved in the 1st adverse case, which took place within the jurisdiction of the Sriperumbudur Police Station in Kancheepuram District. According to him, as per section 3(2) of Goondas Act (Tamil Nadu Act 14 of 1982), the Commissioner of Police namely the 2nd respondent herein is competent to take into account only those cases, which occurred within his local jurisdiction and so, the adverse case mentioned in the detention order ought not to have been taken into account.

4. The next contention is that in the 2nd adverse case, the offences alleged are under section 9(B)(1)(a)(b) of Explosive Act and section 4 (a), 5 of Explosive Substance Act, 1908. As per the definition 2(f) of the Act, a person involved such type of offences will not come under the category of Goonda. According to him, the Explosive Substance offences are to be dealt only under National Security Act and not under the Tamil Nadu Act 14 of 1982. With regard to the ground case, according to him, the offence alleged against the detenu if at all only 120(B) IPC, will be attracted and as per the definition of 2(f) of the Act, this offence is not included.

5. It is his further contention that the detenu was not alleged to have been present in the place of occurrence. In the ground case, as per the case of the prosecution, he alleged to have arranged weapons for committing the offence. So according to him, none of the offences mentioned in the definition of 2(f) of the Tamil Nadu Act are attracted and so, the impugned detention order is liable to be quashed.

6. According to the learned Additional Advocate General, the detenu is involved in 14 cases and it was his usual habit to commit murders and other crimes once released on bail. According to him, in the ground case, the head of the deceased was severed and taken in a gunny bag, transferred midway to other accused and finally thrown away in a ditch.

7. We are of the firm view that the nature, manner and habit of the detenu are not aiming at one individual and not mere a problem of law and order, but it is nothing but affecting the public tranquility.



8. With regard to the first contention, our answer is that there is no prohibition or bar for the 2nd respondent to take into account all these cases for consideration. Section 3 (2) of the Act speaks about only the subjective satisfaction of the detaining authority about the necessity of passing the detention order and does not prescribe the cases through which it must be arrived. In short, it does not prescribe that the adverse cases must also occur within his jurisdiction

9. Reading of the allegation in the the 1st adverse case shows that the detenu alleged to have supplied persons and weapons for committing the murder of one Ramesh. With regard to the 2nd adverse case, as per the allegations levelled by the persecuting authority, it is seen that the detenu alleged to have prepared country bombs for the purpose of murdering Soundarapandi, who is the victim in the ground case. It is the allegations of the prosecution that the co-accused namely Ganesh @ Pilliyar Ganesh along with his associates were making several attempts against the deceased namely Soundarapandi in the ground case and towards that attempt only, the detenu alleged to have made the country bombs and in this regard, case was registered, when the country bomb accidentally exploded. Subsequent to that, only in the ground case, the said Soundarapandi alleged to have been murdered by the said Ganesh @ Pilliyar Ganesh with his associates wherein the detenu alleged to have supplied weapons. So, the contention on the part of the learned counsel for the petitioner that Section 120(B) IPC will not come under the definition clause of 2(f) of the Tamil Nadu Act 14 of 1982, can not be accepted. Section 120(B) IPC will not stand alone in the facts and circumstances of the case. So, the contention that 120(B) IPC is not covered in section 2(f) of the Tamil Nadu Act 14 of 1982 cannot be accepted and it is accordingly rejected.

10. The next contention is that there is a delay of 18 days in considering the representation made by the detenu. Proforma submitted by the Government shows that there is a delay of 18 days between 03.06.2020 and 30.06.2020 remains unexplained by the first respondent. How far the time factor assumes importance for such cases is also to be considered.

11. Article 22(5) of the Constitution of India Guarantees the detenu to make a representation against his detention and from this, it flows the right of objection by the detenu to the authority to be considered at the earliest or as earlier as possible.

12. The term "as earlier as possible" and "as expeditiously as possible" cannot be defined in a mathematical precision.

13. It is observed in **Frances Coralie Mullin Vs. W.C. Khambra [(1989) 2 SCC 275]**, by the Hon'ble Supreme Court that

"It never be absolute or obsessive. The Court's observations are not to be so understood. This has to be depending upon the necessities of the case."



Explaining further, the term "necessity", it is observed as 'several situations may arise compelling departure from the time imperative.'

In what situation, departure may be permitted is further explained as "necessary consultation where legal intricacies or factual ramifications are involved".

In what situation, it is not permissible, is further explained as 'lethargic indifference' and 'needless procrastination'."

So, as per the above principles, it is seen that no upper or lower limit can be prescribed. It depends upon the necessities of a particular case.

14. Here comes, the duty of the detaining authority to explain the delay. But our experience shows that more often than not, the State is furnishing the proforma containing the dates and events and intervening holidays from the date of representation till the final order. But, in no case, we come across the explanation for the delay, which compels the court, more often to allow the Habeas Corpus Petitions. If explanations are offered, that will give an opportunity to this court to know whether the representation was considered with utmost sensitivity and promptness which they deserve. Unexplained delay will lead to an interference of needless procrastination.

15. As observed earlier, there is an unexplained delay of 18 days. The State failed to explain the cause for the delay. Unexplained delay as mentioned earlier lead to an interference of needless procrastination. We are pained to observe that even in heinous matters like this, on the ground of delay in considering the representation, the impugned detention order is liable to be quashed.

16. In fine, the Habeas Corpus Petition is allowed. Consequently, the detenu is directed to be released forthwith, if his presence is not required in connection with any other case.

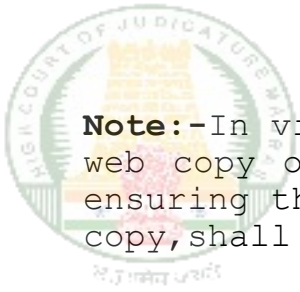
Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar (CS)



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,

WEB COPY

- 1.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Chennai-9.
- 2.The Joint Secretary to Government,
Public(Law & Order), Fort St.George, Chennai-9.
- 3.The Commissioner of Police,
Madurai City,
Madurai.
- 4.The Superintendant,
Central Prison,
Salem.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery order
made in
HCP (MD) No.314 of 2020
15.02.2021

(SV2) CO

AP(18/02/2021) 5P 6C