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

Date of Reservation	04.02.2021
Date of Judgment	16.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM**AND****THE HONOURABLE MR. JUSTICE G. ILANGO VAN****HCP (MD) No. 421 of 2020**

Saranya Devi : Petitioner/Wife of the Detenu
Vs.

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-600 009.

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

3. The Superintendant,
Vellore Central Prison,
Vellore.

: 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.09/BCDFGISSSV/2020, Dated 25.05.2020 and quash the same and set the petitioner's husband by name "Ganesan @ Pilayar Ganesan, son of Palanichamy, aged about 29 years" at liberty from the 3rd respondent.

For Petitioner : Mr.R.Alagumani

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 Ganesan @ Pilayar Ganesan, aged 29 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.09/BCDFGISSSV/2020, dated 25.05.2020, 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.

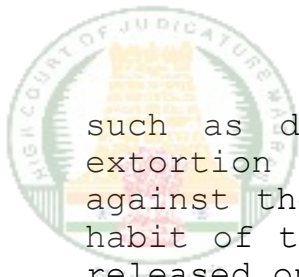
2. We have heard the learned counsel appearing for the petitioner and the learned Additional Advocate General appearing for the State and also perused the materials available on record.

3. The learned counsel appearing for the petitioner would submit that there is a delay of seven days in considering the representation made by the detenu. As per the proforma submitted by the learned Additional Advocate General, it is seen that the Deputy Secretary dealt with the representation on 24.07.2020 and the Hon'ble Minister for Electricity and Prohibition and Excise dealt with the matter on 05.08.2020. So there is a delay of 11 days and excluding the Government Holidays, the total delay is 7 days. According to him, this is fatal to the case of the State and as such, no explanation has been offered by the State for the delay.

4. The next contention is that a communication was received by the detenu, which is dated 26.06.2020 regarding the production of the detenu before the Advisory Board. The enquiry was scheduled to be held on 07.07.2020, but whereas it was served on him only on 03.07.2020. No sufficient opportunity was extended to the detenu for making effective representation before the Advisory Board by arranging friends or relatives and this communication is quite contra to G.O.No.11, dated 20.08.2020 wherein it has been stated that due to pandemic situation, the detenu could not be produced before the Advisory Board. So according to him, purposely and wantonly, the detenu was prevented from making his representation before the Advisory Board, which is violative under section 10 of the Act 14 of 1982.

5. So, when this argument was advanced by the learned counsel for the petitioner, the learned Additional Advocate General submitted that there is no pleadings in this petition with regard to this ground and so, he is not in a position to answer the argument immediately. But, however, no material has been placed before this Court to find out whether the accused was or was not produced before the Advisory Board. So, with regard to the absence of pleadings in this petition, the learned counsel for the petitioner would submit that strict rules of pleading is not applicable to the cases like this nature as it has been held as early as in 1980 in a judgment reported in **Smt. Icchu Devi Choraria Vs Union of India and Others 1980 (4) SCC 531**. Since no materials have been placed before this Court to arrive at the finding. So, this Court has proceed to discuss the other points raised by the learned counsel for the petitioner.

6. It is the contention on the part of the learned Additional Advocate General that the detenu was involved in number of offences



such as double, triple murders, destruction of public property, extortion and robbery etc. He has also listed out the cases filed against the detenu and it is his further contention that it is the habit of the petitioner to commit crimes one after another whenever released on bail by the courts.

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7.A perusal of the entire files shows that the detenu is continuously alleged to have engaged in committing the crimes repeatedly and even in the ground case, it is seen that at his instigation, the head of the deceased namely Soundarapandi was severed and taken in a gunny bag, transferred midway to the other accused and finally thrown away in a ditch. So, it is seen that the detenu is continuously alleged to have engaged in committing heinous crimes, warranting the Detaining Authority to pass such a detention order.

8.We find that the subjective satisfaction reached by the Detention Authority is proper and based upon the materials placed before him. The nature of the crimes alleged to have been committed by the detenu are not merely law and order problem alone. So on this ground, we find that the subjective satisfaction of the Detaining Authority is perfectly valid. But the problem lies in considering the representation made by the detenu, as mentioned earlier, there is a delay of seven days in considering the representation. In the connected case HCP(MD)No.314 of 2020 filed on behalf of the co-accused, an observation has been made by this court, which would run thus:-

"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."

9. The above cited observation equally applies to this case also. So on the ground of delay in considering the representation, we are of the view that the impugned detention order is liable to be quashed and accordingly, it is quashed.

10. 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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Sub Assistant Registrar (CS)

dss

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 copy of the order, shall be the responsibility of the advocate/litigant concerned.



To,

1.The 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,
Vellore.

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.

HCP (MD) No.421 of 2020
16.02.2021

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