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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P.(MD) No.459 of 2020

Chandrakala

... Petitioner

-vs-

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

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

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records pertaining to the detention order in H.S.(M)Condfdl.No.36/2020 dated 17.06.2020 passed by the 2nd respondent and set aside the same by setting the detenu by name Pandararajan S/o Chelladurai aged about 39 years at his liberty, now detained at Central Prison, Palayamkottai, Tirunelveli.

For Petitioner : Mr.K.Selvakumarasamy

For Respondents : Mr.K.Dinesh Babu

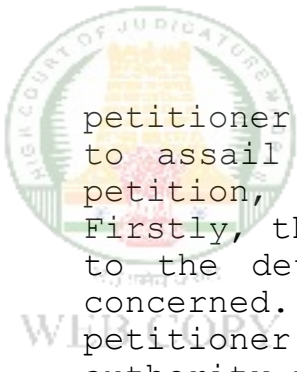
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

This Habeas Corpus Petition has been filed challenging the detention order passed by the second respondent in H.S.(M) Condfdl.No.36/2020 dated 17.06.2020 wherein the detenu namely, Pandararajan S/o Chelladurai aged about 39 years has been branded as 'Goonda' as contemplated under Section 2(f) of the of the Tamil Nadu Act 14 of 1982.

<https://hcservices.ecourts.gov.in/hcservices> 2.Mr.K.Selvakumarasamy, learned counsel appearing for the



petitioner would argue that though several grounds have been raised to assail the order of detention impugned in this habeas corpus petition, the detenu is entitled to succeed on two grounds. Firstly, the detaining authority failed to supply the legible copies to the detenu for making effective representation to authorities concerned. It is the submission of the learned counsel for the petitioner that the similar case details relied on by the detaining authority to reach the subjective satisfaction are totally illegible which deprived the valuable right of the detenu from making effective representation to the concerned authorities. In this regard, the learned counsel for the petitioner drew the attention of this Court to page No.399 onwards. He further added that in the representation sent on behalf of the detenu dated 07.07.2020, clean copies have been sought for from the authorities, but so far they have not been supplied and no explanation has been offered for non supply of the copies to the detenu. In this regard, the learned counsel relied on the decision of the Full Bench of this Court in the case of **G.Kalaiselvi vs. The State of Tamil Nadu** reported in **(2007)5 CTC 657**. Secondly, there was inordinate and unexplained delay in considering the representation of the detenu in violation of Article 22 of the Constitution of India.

3.Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents while reiterating the counter filed by the second respondent would submit that the detenu himself has involved in number of criminal cases which warranted the detaining authority to clamp the order of detention. It is further contended that while reaching the subjective satisfaction, the second respondent/detaining authority has perused the material documents produced by the sponsoring authority. According to the learned Additional Public Prosecutor, there is no infirmity or irregularity in the order of detention passed by the second respondent warranting interference of this Court and hence, he prayed for dismissal of the Habeas Corpus Petition.

4.We have heard the rival submissions and perused the materials available on records.

5.As rightly pointed out by the learned counsel for the petitioner, while arriving at the subjective satisfaction, the detaining authority has referred the bail granted to one Ramakrishnan, who is the accused in Crime No.229 of 2014 on the file of the Thoothukudi South Police Station. In the ground of detention, it is stated that in Cr.M.P.No.1265 of 2014, he was granted bail by the District Vacation Sessions Judge, Thoothukudi on 29.05.2014. The First Information Report and other documents were enclosed in the booklet from page Nos.399 to 405. On perusal of the said pages, we are of the opinion that the documents are illegible and in the representation, the detenu sought for those documents from the detaining authority, but admittedly, those documents have



not been supplied so far nor any explanation was given for non-supplying of the documents. In the case of **Kalaiselvi** (cited supra), it has been held that non furnishing of the documents sought for by the detenu or offering no explanation for non supplying of documents would vitiate the detention order.

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6.Further, in the instant case, it is not in dispute that the detenu was detained by the order of the second respondent dated 17.06.2020. Aggrieved over the same, a representation dated 07.07.2020 has been sent to the first respondent and the same was received on 21.07.2020 and on the same day, remarks were called for and the same were received on 27.07.2020. The Deputy Secretary dealt with the matter on 27.07.2020. The concerned Minister dealt with the matter on 05.08.2020 and thereafter, the detenu's representation was rejected on 07.08.2020. It is seen that there was delay of 8 days between 27.07.2020 and 05.08.2020. It is also seen that there are 2 Government holidays and after excluding the same, there is a delay of 6 days in considering the representation of the detenu.

7.In the case of **Rajammal vs. State of Tamil Nadu and another (1999 (1) SCC 417)** the Honourable Apex Court 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.

8. In the case on hand, there is absolutely no explanation for the delay of 6 days in considering the representation of the detenu. Hence, in our considered view, the detention order is liable to be set aside on the ground of delay also by following the decision of the Honourable Apex Court referred supra.

9.In fine, the order of detention passed by the second respondent, in H.S.(M)Condfdl.No.36/2020 dated 17.06.2020 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Pandararajan S/o Chelladurai aged about 39 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

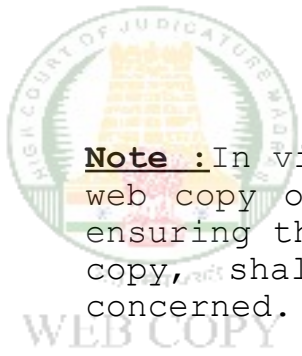
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Sub Assistant Registrar(CS)

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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 Principal Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai-9.
- 3.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 4.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Order made in
H.C.P. (MD) No.459 of 2020
12.02.2021**

SV2 (CO)
SRS (09/03/2021) 4P : 6C