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H.C.P.(MD)No.1010 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.11.2021
Delivered on : 30.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

H.C.P. (MD)No.1010 of 2021

Indira, W/o.Rajadurai ... Petitioner/ Wife of detenue

-vs-

1.Government of Tamil Nadu,
Rep. by the Additional Chief Secretary to 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,
Central Prison,
Trichy.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the second respondent in P.D.No.74 of 2021, dated 07.07.2021, quash the same and direct the respondents to produce the body or person of the petitioner's husband Rajadurai, Son of Thangavel, aged about 41 years, now confined at Central Prison, Tiruchirappalli and set him at liberty forthwith.

For Petitioner : Mr.Ajmal Khan
Senior Counsel
for Mr.H.Mohammed Imran

For Respondents : Mr.S.Ravi
Additional Public Prosecutor



O R D E R

S.VAIDYANATHAN, J.
and
G.JAYACHANDRAN, J.

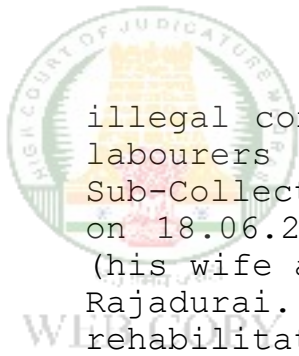
The petitioner is the wife of the detenu Rajadurai.

2.The Habeas Corpus Petition is against the order of preventive detention under Act 14 of 1982 passed by the second respondent, vide order dated 07.07.2021 in P.D.No.74 of 2021 terming Rajadurai [aged about 41years], S/o.Thangavel, resident of Athivetti Village, Madukkur, Pattukkottai Taluk, Thanjavur District as a Goonda.

3.The detention order impugned in this petition reveals that the detenu Rajadurai, running a Finance Company under the name and style of M/s.Amman Finance. On 18.06.2021 a case in Crime No.546 of 2021 was registered by the Madukkur Police at 14.00 hours against the detenu for the offences under Sections 294(b) and 506 (ii) of I.P.C. and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, on the complaint given by one Azarudeen, S/o.Rabibullah of Idayakadu, Madukkur.

3.1.The complaint of Azarudeen against Rajadurai is that, for his urgent finance need, he borrowed Rs.50,000/- from Rajadurai on 23.11.2019. The said Rajadurai charged interest at the rate of Rs.500/- per day. Azarudeen was regularly paying the daily interest from the month of December, 2019. The collection boys engaged by Rajadurai used to collect the money and give receipt for the same. While so, suddenly during the month of July, 2020, the detenu demanded higher interest alleging that the daily interest defaulted is added to the principal and henceforth he should pay Rs.700/- per day as interest for the principal amount of Rs.70,000/-. Thereafter, on 10.10.2020 Azarudeen paid Rs.26,500/- and got receipt. On 15.06.2021 he and his mother met Rajadurai, paid Rs 50,000/- and promised to pay the balance Rs.20,000/- next month. In spite of repaying a total sum of Rs.1,60,107/- and obtaining receipts in addition Rs.50,000/- paid on 15.06.2021, for which, Rajadurai promised to give receipt later, Rajadurai started demanding Rs.6,00,000/- towards principal and interest. When he and his mother pleaded that they cannot afford to pay such a huge amount, Rajadurai abused them in filthy language and told to send his younger sister to cohabit with him or he will kill his family members.

3.2.On the same day, the Madukkur Police has registered another case in Crime No.547 of 2021 at 18.00 hours against the detenu for the offences under Sections 294(b), 342, 354-A, 370 and 374 of I.P.C. and Sections 16,17 and 18 of the Bonded Labour System (Abolition) Act, 1976 based on the written complaint of one Gokul, Village Administrative Officer (V.A.O.) of Athivetti (West) Village, Pattukottai Taluk, alleging that on receiving information regarding



illegal confinement of one Meiyar and his family members as bonded labourers by Rajadurai at his coconut grove, a team headed by the Sub-Collector and Superintendent of Police visited the coconut grove on 18.06.2021 about 01.15 p.m. They found the family of Meiyar (his wife and two sons) were kept as bonded labourers by the detenu Rajadurai. The team rescued the bonded labourers and sent for rehabilitation. On enquiry, the complainant (Gokul - V.A.O.) came to know that the said Meiyar borrowed Rs.2,70,000/- from Rajadurai five years ago. For the money borrowed, he and his wife and two sons were brought to the coconut grove of the detenu to work as labourers and kept in confinement. Against their wish, they are all forced to work for Rajadurai for a meagre wage of Rs.50/- each per day. Two years ago, when he and his family escaped from the clutches of the detenu, they were forcibly brought back and forced to work. After re-paying Rs.1,29,000/- when Meiyar sought for the release, Rajadurai is demanding Rs.6,00,000/-.

3.3.The Inspector of Police attached to Madukkur Police Station has arrested Rajadurai on 18.06.2021 at 23.30 hours and remanded him to judicial custody. Prior to preventive detention, the detenu had filed petitions for bail in these two cases, but the Courts declined to grant bail.

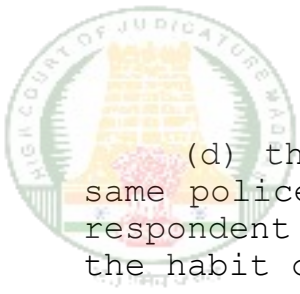
3.4.The second respondent being satisfied that the wife of the detenu is trying to get bail for her husband and she may succeed in getting bail since in a similar case registered under the Bonded Labour System (Abolition) Act and the SC/ST Act, Court has granted bail, hence, there is real possibility of Rajadurai coming out on bail and if he comes out on bail, he will indulge in further activities, which will prejudice the public peace and maintenance of public order, had issued the order of preventive detention of the detenu on 07.07.2021.

4.Mr.Ajmalkhan, learned Senior Counsel appearing for the petitioner submitted that,

(a) the pre-detention representation dated 26.06.2021 given by the petitioner was not considered by the second respondent. The arrest of the detenu intimated to the brother of the detenu only through S.M.S. and such intimation is not a valid intimation and contrary to the guidelines issued by the Hon'ble Supreme Court;

(b) after the dismissal of the earlier bail petitions, there is no bail petition filed or pending on the date of issuing the detention order. The anticipation of filing bail petitions in future and possibility of getting bail is not real, but without cogent and sufficient materials;

(c) the adverse case foisted against the detenu for offences under the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, is entirely different from the ground case



(d) the adverse case and the ground case were registered by the same police on the same day one after another. Therefore the second respondent erred in came to a wrong conclusion that the detenu is in the habit of indulging in criminal offences continuously;

(e) the translated copy of relevant records in Tamil language were not furnished to the detenu for effective representation. Further, the copies of documents were not legible;

(f) the dates of remand extension not furnished correctly by the sponsoring authority. Despite that, without seeking clarification from the sponsoring authority, the detaining authority has passed the impugned order without proper application of mind;

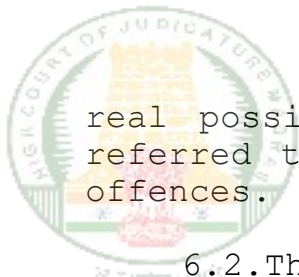
(g) there is no iota of material to show that the activities of the detenu are of the nature of creating fear, terror and feeling of insecurity in the minds of the people in the said locality; and

(h) the post-detention representations dated 14.07.2021 and 19.08.2021, sent by the petitioner were not considered within a reasonable time.

5.Per contra, the second respondent justifying the detention order, had filed counter affidavit. The learned Additional Public Prosecutor submitted that the material placed by the sponsoring authority was sufficient to the detaining authority to arrive at the just conclusion that the detenu Rajadurai is a Goonda as defined under Act 14 of 1982.

6.The learned Additional public prosecutor submitted that investigation had led to recovery of materials evidence to show that the detenu was charging day interest for the loan advanced and used to get signatures in blank papers both in plain sheets and Non-Judicial Stamp Papers to misuse it in future. For any default in payment of interest, the same was added to the principal and additional interest was collected. The defaulters were verbally abused and threatened by the detenu and his men. The women folks of the defaulters family were threatened to extend sexual favour, if they were not able to repay the loan along with the exorbitant interest. Charging day interest fall within the meaning of exorbitant interest defined under the Tamil Nadu Prohibition of Charging of Exorbitant Interest Act. Further, the evidence collected reveal the detenu used to confine the borrowers, who default in re-payment and extract labour from them. This attracts the provisions of the Bonded Labourer System (Abolition) Act. These two offences are inter-related, though fall under two different legislations.

6.1. The detenu had attempted twice to get bail. The
<https://hcs.e-silcourts.gov.in/hcs/offices/> moving the higher Court for bail and succeeding is a

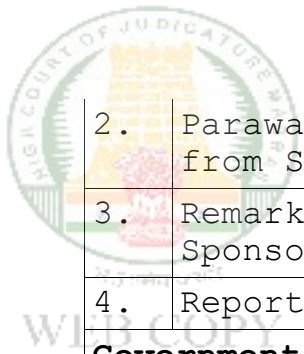


real possibility and cannot be ruled out. The similar case was referred to indicate the possibility of obtaining bail in similar offences.

6.2.The allegation that the intimation of arrest was made only by S.M.S. is incorrect. The brother of the accused was present at the time of arrest and he has signed as witness in the arrest memo. Likewise, it is incorrect to say the legible copies of documents were not furnished. Referring the paper book, the learned Additional Public Prosecutor submitted the translated version of all relevant documents were furnished. The detenu had made effective representation at all stages and nowhere prejudice caused to the detenu on account of documents relied and furnished.

6.3.Regarding delay in considering the representation, it is submitted by the learned Additional Public Prosecutor that there was no unreasonable delay in considering the representation. The delay was reasonable and was only due to the intervening public holidays. He further submitted that on behalf of the detenu, two representations were made. The first representation dated 14.07.2021 to the second respondent and the second representation to the first respondent on 19.08.2021. Both were duly considered within reasonable time. The following sequence of dates for considering the representation along with the dates of intervening public holidays furnished by the learned Additional Public Prosecutor.

Sl. No.	Description	Rep.I	Rep.II
1.	Representation dated	14.07.2021	19.08.2021
2.	Representation received dated	19.07.2021	24.08.2021
3.	Remark called on dated	19.07.2021	24.08.2021
4.	Reminder letter dated	--	--
5.	Remarks received on dated	30.07.2021	09.09.2021
6.	File submitted on dated	30.07.2021	09.09.2021
7.	Under Secretary dealt with on	30.07.2021	09.09.2021
8.	Deputy Secretary dealt with on	30.07.2021	09.09.2021
9.	Minister for Electricity, P & E dealt with on	09.08.2021	28.09.2021
10.	Rejection letter prepared on	09.08.2021	28.09.2021
11.	Rejection letter sent to the detenu	09.08.2020	28.09.2021
Collectorate			
1.	Representation received from Government / Central Prison	26.07.2021	31.08.2021



2.	Parawar Remarks called for from Sponsoring Authority	26.07.2021	01.09.2021
3.	Remarks received from Sponsoring Authority on	29.07.2021	07.09.2021
4.	Report sent to Government	29.07.2021	07.09.2021

Government Holidays:-

Rep.I: 21.07.2021, 24.07.2021, 25.07.2021, 31.07.2021, 01.08.2021, 07.08.2021, 08.08.2021

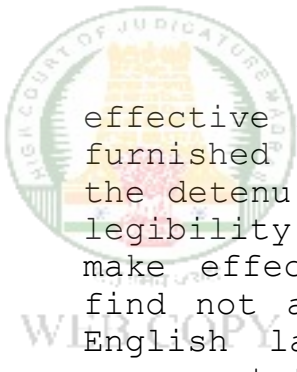
Rep.II: 28.08.2021, 29.08.2021, 30.08.2021, 04.09.2021, 05.09.2021, 10.09.2021, 11.09.2021, 12.09.2021, 18.09.2021, 19.09.2021, 25.09.2021, 26.09.2021

7.This Court in order to verify the contentions made by the respective counsels, called for the records and perused.

8.Based on the recommendation of the sponsoring authority, Rajadurai had been detained by the second respondent under Act 14 of 1982. The adverse case is under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act and the ground case under the Bonded Labour System (Abolition) Act. These two Acts were enacted at two different periods for specific objects. The factual background and reason for enacting these two legislations is also well known. The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 is a state Act, to curb the menace of charging exorbitant interest from the gullible public, who borrow loan when in distress, resulting in suicide. Bonded Labour System (Abolition) Act,1976 is the Central Act, to curb the menace of slavery practised by some rich and wealthy people, by advancing loan and bond the borrower against the borrower wish. Both these legislations, though one a State legislation and another a Central legislation, both are two different aggravated form of crime emanating from the common object of depriving others wealth and/or liberty.

9.The case of the petitioner is that her husband was taken into custody on 16.06.2021 but shown arrest only on 18.06.2021. It is alleged that the arrest was not informed to the family members as per the guidelines of the Hon'ble Apex Court. On verification of records, this Court finds no indication that the detenu was taken into custody on 16.06.2021. In fact, in the Arrest Memo, dated 18.06.2021, one Ranjith S/o.Thiyagarajan, who is none other than the brother of the detenu, had signed as witness for arrest. In addition, the intimation of arrest is also made through S.M.S. for Cell No.7539949559. Hence, the contention of the petitioner that intimation was only through SMS is not true.

10.In respect of copies of document relied for detention, it is to be noted that the petitioner does not specify which of the document served to the detenu not legible or for which document the translated copy not furnished which disabled the detenu to make



effective representation. Mere a bald allegation about the document furnished cannot be disproportionately given undue weightage unless the detenu *prima facie* show that any particular document for want of legibility or for want of tamil translation disentitled him/her to make effective representation. On reading the representation, we find not a single document referred as illegible or for being in English language alone prevented the detenu to make effective representation.

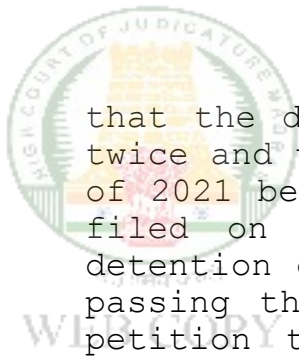
11.Regarding the delay in disposing the representation, Article 22(5) of the Constitution mandates the concerned authority to consider the representation ''as soon as possible''. The dates and events provided in the table above as compared with the original records, indicates that the representation has been disposed within reasonable time and no supine indifference, slackness or callous attitude in considering the representation is noted. This Court is of the view that it is appropriate to extract the following observation of the Hon'ble Supreme Court in the often quoted **Rajammal's case [Rajammal vs. State of Tamil Nadu and another, 1999 (1) SCC 417]** to understand, when delay in disposing the representation to be considered as prejudice to the detenu.

"7.

''It is a constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the detention law concerned, within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.''

(Emphasis added).

12.Regarding the opinion of the detaining authority about the real possibility of getting bail and similar case theory, the dictum laid by the Hon'ble Supreme Court in **Rekha Vs. State of Tamil Nadu and another (2011 (5) SCC 244)** for testing real possibility of getting bail and similar case theory is relied by the learned Senior Counsel. On applying the test, in this case find records to show



that the detenu had filed bail petition before the concerned Court twice and they were dismissed. The second bail petition in Cr.No.547 of 2021 before the learned Principal District Judge, Thanjavur, was filed on 30.06.2021 and same was dismissed on 03.07.2021. The detention order was passed on 07.07.2021. Therefore, on the date of passing the detention order, the possibility of pursuing the bail petition to its logical end was real. Therefore, the facts and preposition of law laid in **Rekha's case [supra]** not of any relevance to the facts of the instant case.

13.This Court on perusal of record also satisfied that this is not a politically motivated case falsely foisted against the detenu as it is alleged by the petitioner. Based on the confession statement of the detenu, the investigating officer has recovered nearly 347 sheets of papers signed on plain or stamp papers, either filled or unfilled executed by several persons whose names are mentioned in the confession statement of the detenu. This indicates that apart from the de-facto complainant in Cr.No.546 of 2021, there are many others, who have borrowed money from the detenu for exorbitant interest and executed pro-notes and blank signed papers. The ramification of the activities of the detenu if allowed to continue, certainly will cause fear in the minds of the public in the said locality.

14.As a result, this Court holds that there is no sufficient ground to interfere with the order of detention passed by the second respondent, hence, this Habeas Corpus Petition is dismissed.

Sd/-

Assistant Registrar (CS-I)

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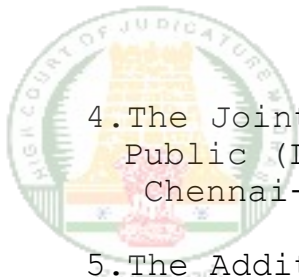
Sub Assistant Registrar(CS)

To

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

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

3.The Superintendent,
Central Prison,
Trichy.



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

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

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-37105[F] dated
02/12/2021)

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