



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2021

CORAM:

WEB COPY

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

H.C.P.(MD) No.779 of 2020

Fevinal

... Petitioner

-vs-

1.State of Tamilnadu,
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

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

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order passed in P.D.No.17/2020, dated 02.07.2020 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu I.e., the petitioner's son, namely, Kavaskar, aged about 21 years, S/o.Francis, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

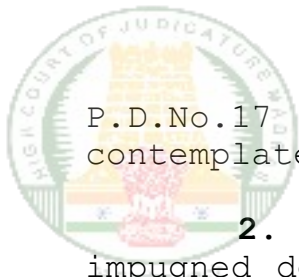
For Respondents : Mr.K.Dinesh Babu

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 mother of the detenu, namely, Kavaskar, son of Francis, aged about 21 years, against the detention order passed by the second respondent, in



P.D.No.17 of 2020, dated 02.07.2020, 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.N.Pragalathan, learned counsel for the petitioner, would mainly contend that the impugned order of detention is liable to be set aside on the grounds of failure of intimation of arrest of the detenu either to his family members or his relatives and delay in considering the petitioner's representation.

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 rightly passed by the second respondent taking note of the activities of the detenu and it has been passed to prevent the detenu from indulging in similar activities in future. It is the further submission of the learned Additional Public Prosecutor that the arrest of the detenu has been properly intimated to his family members and the delay in disposal of the representation has not caused any prejudice to the detenu 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 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.375 of the booklet would show that the arrest of the detenu in the ground case on 14.06.2020 was intimated to Cell No.9655959043, 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.

6. Further, it is seen from the proforma furnished by the learned Additional Public Prosecutor that the representation of the petitioner, dated 09.09.2020, was received on 29.09.2020. Remarks were called for on 29.09.2020 and it was received on 14.01.2020. The Deputy Secretary dealt with the matter on 15.10.2020. The concerned Minister dealt with the matter on 04.11.2020 and the representation came to be rejected on 06.11.2020. It is seen that in between 15.10.2020 and 04.11.2020, there was a delay of 19 days,



after excluding the Government Holidays of 5 days, there was a delay of 14 days in considering the petitioner's representation.

7. At this juncture, it is useful to refer the decision of the Honourable Apex Court in the case of **Rajammal vs. State of Tamil Nadu and another**, reported in **1999 (1) SCC 417**, wherein the Apex Court has 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, as stated supra, the delay of 14 days has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the grounds as stated above by following the decisions of the Honourable Apex Court referred supra.

9. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in P.D.No.17/2020, dated 02.07.2020, is set aside. Consequently, the detenu, namely, Kavaskar, son of Francis, aged about 21 years, who is 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 (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

AM

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 Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.



2.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai-9.

3.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

4.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

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

Order made in
H.C.P. (MD) No.779 of 2020
25.02.2021

SJ(CO)
SRS (11/03/2021) 4P : 6C