



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

H.C.P. (MD) No.777 of 2020

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Viswanath

... Petitioner

-vs-

1.The State of Tamil Nadu

Rep.by the Additional Chief

Secretary to Government

Home, Prohibition & Excise Department

Secretariat

Chennai-9

2.The District Collector and District Magistrate

O/o.The District Collector and District Magistrate

Thanjavur District

Thanjavur

3.The Superintendent

Central Prison

Tiruchirappalli

Tiruchirappalli District

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records relating to the impugned order of detention made in P.D.No.49/2020, dated 31.08.2020, on the file of the District Collector and District Magistrate, Thanjavur District, Thanjavur, the 2nd respondent herein, branding the detenu by name Viswanath, son of Govindaraj, aged about 31 years, as 'Sand Offender', who is now confined in Central Prison, Tiruchirappalli, Tiruchirappalli District and quash the impugned order of detention and set him at liberty by producing him before this Court.

For Petitioner : Mr.A.Thiruvadi Kumar

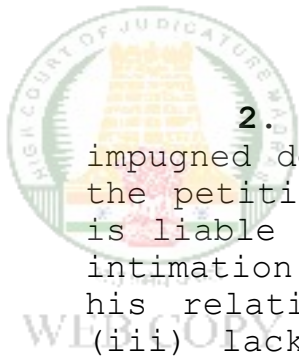
For Respondents : Mr.K.Dinesh Babu

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 detenu, namely, Viswanath, son of Govindaraj, aged about 31 years, against the detention order in P.D.No.49/2020, dated 31.08.2020, passed by the second respondent, branding him as "Sand Offender" as contemplated under Section 2(gg) of Tamil Nadu Act, 14 of 1982.



2. Though several grounds have been raised challenging the impugned detention order, Mr.A.Thiruvadi Kumar, learned counsel for the petitioner, would contend that the impugned order of detention is liable to be set aside on three grounds, namely, (i) failure of intimation of arrest of the detenu either to his family members or his relatives, (ii) delay in considering the representation and (iii) lack of application of mind on the part of the Detaining Authority while passing the impugned order of detention. According to the learned counsel, the similar case relied on by the Detaining Authority to arrive at the subjective satisfaction is not similar to the case of the detenu. The detenu was implicated as an accused in two adverse cases and in the ground case. The ground case was registered by Tanjore Taluk Police Station in Crime No.1035 of 2020, for the offence punishable under Sections 379 and 307 I.P.C. r/w Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957. But, the similar case referred by the Detaining Authority involves Section 379 I.P.C. and there is nothing on record to indicate that the accused in the similar case is also having two adverse cases and the offence punishable under Section 307 I.P.C. is also included.

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 passed by the second respondent after arriving at the subjective satisfaction based on the cogent and relevant materials placed by the Sponsoring Authority and to prevent the detenu from indulging in similar activities in future. It is the further submission of the learned Additional Public Prosecutor that the 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.45 of the booklet would show that the arrest of the detenu in the ground case on 13.08.2020 was intimated to Cell No.9791916332, 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 11.09.2020, was received on 09.10.2020. Remarks were called for on the same day i.e.09.10.2020 and it was received on 04.11.2020. The Deputy Secretary dealt with the matter on 05.11.2020. The concerned Minister dealt with the matter on 16.11.2020 and the representation came to be rejected on 17.11.2020. It is seen that in between 05.11.2020 and 16.11.2020, there was a delay of eight days, after excluding the Government Holidays of two 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. In the case on hand, as stated supra, the delay of eight days has not been properly explained by the respondents.

8. That apart, a perusal of the records, more particularly Page No.75 of the booklet, would show that in the similar case relied on by the Detaining Authoirty to arrive at the subjective satisfaction, the accused Prabakaran and Prem Kumar have filed a bail petition in Crime No.30 of 2015, which was registered by the Sub Inspector of Police, Thiruvaiyaru Police Station, for the offence punishable under Section 379 I.P.C. and Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957. But, in the instant case, the ground case was registered for the offence punishable under Sections 379 and 307 I.P.C. r/w Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957. So, we find force in the contention of the learned counsel for the petitioner that the similar case relied on by the Detaining Authority to arrive at the subjection satisfaction is not similar to the case of the detenu. Hence, in our considered view, the detention order is liable to be set aside on the grounds as stated above by following the decisions cited supra.

9. In fine, the Habeas Corpus Petition is allowed. The order of detention in P.D.No.49/2020, dated 31.08.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Viswanath, son of Govindaraj, aged about 31 years, who is now detained at Central Prison, Tiruchirappalli, 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)

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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.

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To:

- 1.TheAdditional Chief Secretary to Government,
Home, Prohibition & Excise Department,
State of Tamil Nadu,
Secretariat, Chennai-9.
2. The Joint Secretary to Government,
Public (Law &Order)
Fort St.Goerge,
Chennai 600 009.
- 3.The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Thanjavur District, Thanjavur.
- 4.The Superintendent,
Central Prison,
Tiruchirappalli,
Tiruchirappalli District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.777 of 2020
16.02.2021

KUN(CO)

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