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H.C.P.(MD) No..854 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P. (MD) No.854 of 2020

Muthukumar

... Petitioner

-vs-

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

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Theni District, Theni.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... 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 of the Respondent No.2 in Detention Order No.51/2020, dated 23.09.2020 and quash the same and direct the respondents to produce the body or person of the detenu by name Muthukumar, son of Marimuthu, aged about 20 years, now detained as 'Goonda' at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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, Muthukumar, son of Marimuthu, aged about 20 years, against the detention order No.51 of 2020, dated 23.09.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.

2. The learned counsel appearing for the petitioner, Mr.R.Alagumani, would argue that though several grounds have been raised to assail the detention order impugned in this habeas corpus



petition, the petitioner is entitled to succeed on two grounds. Firstly, the detaining authority has exercised arbitrary power to detain only two accused leaving other two accused, who are also similarly placed in the ground case. Secondly, the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India have not been followed in this case and there is unexplained and inordinate delay in disposal of the petitioner's representation, which would vitiate the impugned order of detention.

3. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor, on instructions, submitted that the second respondent has rightly passed the detention order taking note of the gravity of the offence involved in this case and only to prevent the detenu from indulging in similar activities in future, which prejudice to the maintenance of the public order. According to the learned Additional Public Prosecutor, there is no illegality or irregularity warranting interference of this Court. It is further submitted that 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 instant case, it is an admitted fact that there are totally 4 accused in the ground case and the petitioner has been arrayed as A1, however, detention orders have been passed only as against two accused, when two other accused are also placed in same footing. It is also not disputed that in respect of co-accused, namely, Marimuthu, a detention order was passed and it has been revoked by the Government. In **Chandra v. The Secretary to Government [2010 (1) MWN (Cr.) 129]**, it has been held that the Authorities cannot exercise their power arbitrarily for picking and choosing only some of the accused to clamp the order of detention. The relevant paragraph would run thus:

"10. It is the further contention raised on behalf of the petitioners that the equal protection clause shall be attracted against the orders of preventive detention as well. But, this court is of the considered view that the equal protection clause cannot be stretched further to be made applicable for quashing the orders of detention for not assigning reasons in the grounds of detention for the exclusion of others and selection of the detenus alone when the detaining authority choses the persons among the accused in the ground case to be clamped with the order of detention under the preventive detention law. However, we are of the view that there is some force in the contention that



the exercise of power by the detaining authority to pass orders of detention against the detenus concerned in these HCPs alone can be challenged as being arbitrary. The arbitrariness pointed out on behalf of the petitioners is that though the detaining authority chose to consider the detenus concerned in these HCPs alone as a class out of the nine accused persons, who were arraigned as such in the first and third adverse cases and the ground case, there was no reasonable basis for such a classification to treat them differently from the rest of the persons. The said argument has been advanced on the ground that no reason has been assigned in the grounds of detention for selecting the above said three persons alone for being termed as goondas. We are of the considered view that it shall not be necessary on the part of the detaining authority to assign any reason in the grounds of detention as to why the other persons are not chosen for being detained under the preventive detention law. Suffice to state the satisfaction that the detenus are to be termed goondas and their presence at large will be detrimental to the maintenance of public order. But the same does not mean that the court while dealing with HCP challenging the order of detention, cannot go into the question of arbitrariness in such classification. When the order of detention is challenged on the ground of arbitrariness based on the classification of the detenus alone from the rest of the accused, it shall be the duty of the detaining authority and the State to establish reasonable basis of such classification to rule out arbitrariness. In this case, though the detaining authority cannot be found fault with for not assigning reason in the grounds of detention for selecting the detenus concerned in these HCPs alone for clamping the orders of detention leaving out the other accused in the ground case and the adverse cases, there is failure on the part of the respondents herein to state the basis of such classification atleast before the court in these HCPs. The failure on the part of the respondents to assign reasons in their counter affidavit in these petitions as to why the detenus alone were selected for detention as goondas leaving out the other six persons will show that the exercise of the statutory power by the detaining authority was arbitrary especially when the left out persons were placed on equal footing with Murugan and Murali, the detenus



concerned in H.C.P.Nos.2393 and 2404 of 2009 and found implicated in more number of cases than Rajendran, the detenu concerned in H.C.P.No.2405 of 2009. Hence we are convinced that orders of detention challenged in these HCPs are vitiated on the ground of arbitrariness."

In this case also, no explanation has been given by the respondents for passing the detention order only against some of the accused.

6. Further, it is seen from the proforma furnished by the learned Additional Public Prosecutor that the representation of the petitioner, dated 05.10.2020, was received on 15.10.2020. Remarks were called for on 15.10.2020 and it was received on 23.10.2020. The Deputy Secretary dealt with the matter on 23.10.2020. 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 23.10.2020 and 04.11.2020, there was a delay of 10 days, after excluding the Government Holidays of 6 days, there was a delay of 6 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 6 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 cited supra.

9. In fine, the Habeas Corpus Petition is allowed. The order of detention No.51 of 2020, dated 23.09.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Muthukumar, son of Marimuthu, aged about 20 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS-III)

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/ /2021

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.

To:

- 1.The Additional Chief Secretary to Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai
- 3.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Theni District, Theni.
- 4.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.854 of 2020
16.03.2021

ES (CO)
TR(30.03.2021) 5P 6C