



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2021

CORAM:

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

H.C.P.(MD)No.1232 of 2020

Muneeshwaran @ Root Muneesh : Petitioner/Detenu

Vs.

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City,
Madurai.

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

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records of the 2nd respondent in Detention Order No.78/BCDFGISSSV/2020, Dated 19.12.2020 and quash the same and direct the respondents to produce the body or person of the detenu by name Muneeshwaran @ Root Muneesh, Son of Sivaperumal, aged about 24 years, now detained as "Drug Offender" 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 **G.ILANGOVAN, J**)

This habeas corpus petition has been filed by the detenu, namely, Muneeshwaran @ Root Muneesh, Son of Sivaperumal, aged about 24 years, challenging the detention order in No.78/BCDFGISSSV/2020, dated 19.12.2020 passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

2. The learned counsel for the petitioner Mr.R.Alagumani would submit that the detention order impugned in this habeas corpus petition is liable to be set aside on three grounds. Firstly, on the ground of arbitrary action taken by the Authorities for clamping the detention order only as against few accused, leaving the other accused, who are also similarly placed. Secondly, on the ground of defective order while passing confirmation order. In support of his contention, he relied upon the decision of this Court reported in **(2012) MWN (Cri) 143 (DB)** in the case of **Bhaskar Vs. The Commissioner of Police, Chennai City Sub-Urban Area, St. Thomas Mount, Chennai and another**). Thirdly, there is an inordinate and unexplained delay in considering the representation of the petitioner.

3.Per contra, learned Additional Public Prosecutor Mr.K.Dinesh Babu appearing for the respondents would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the order of detention passed by the second respondent. 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. In the instant case, it is an admitted fact that there are totally 6 accused, however, detention order has been passed only as against 4 accused when the other accused are also placed in same footing. 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 chooses 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, while passing confirmation order, the Government has not taken into account the order of Advisory Board of revoking the detention order passed against the co-accused, namely, Mareeshwaran, S/o Kalimuthu as per G.O.Rt.No.577 dated 04.02.2021. In the decision of **Bhaskar's case (DB)** (cited supra), it has been held that while passing the confirmation order, the Government is duty bound to consider the revocation of the detention order passed against the co-accused. Failure on the part of the Government will vitiate the detention order. The relevant portion is extracted hereunder:-

"....."

19. In Mohd. Shakeel Wahid Ahmed v. State of Maharashtra and Others 1983 SCC (Cri) 509, relied upon by the learned counsel for the petitioner, the fact that the order of preventive detention of a person on the basis of selfsame incident had been revoked on the basis of the report of the Advisory Board was not brought to the notice of the detaining authority, was considered to have vitiated the order of preventive detention. The only difference in the said case and the present case is that in the said



case, the opinion and the consequent order of release were not brought to the notice of the detaining authority, whereas in the present case, such opinion and the consequent release of the detainees, who had been detained on the basis of the very same ground case, was not brought to the notice of the State Government while it was considering the question of confirmation of the order of detention. In our opinion, this itself in the facts situation does not make a difference in the matter.

20. As per Section 12(1), even if the Advisory Board gives a opinion that there is insufficient cause for detention of a person, the State Government is not bound to confirm the order of detention, but the State Government "may confirm the detention order". In other words, even though as per Section 12(2) the opinion of the Advisory Board that there is no sufficient cause for the detention is binding and the State Government is bound to revoke the detention in such case, the opinion of the Advisory Board that there is sufficient cause for detention is not binding on the State Government and inspite of such opinion regarding sufficiency for the cause of the detention, the State Government may revoke such detention. It is obvious that while considering the question of confirmation of the order of detention under Section 12(1), the State Government is required to apply its mind to all relevant circumstances. The fact that the Advisory Board had given a particular opinion for releasing a "co-detenu", who had been detained on the very same ground case, is obviously a relevant circumstance to be considered by the State Government and the ratio of the decision of the Supreme Court is equally applicable.

21.

22.

23. Learned counsel for the State has also submitted that if such submission is accepted, the State Government would be required to consider and apply opinion of the Advisory Board in respect of all the detainees involved in different cases. We do not think that the State Government is required to consider the factum of release of all the detainees detained in different cases. Where, however, the ground case is the same in respect of several detainees, how the case of a co-detenu is considered



subsequently by the Advisory Board or even the Court, is a relevant circumstance, which the State Government is required to consider at the subsequent stage of confirmation. This is not to suggest that in every case where the Advisory Board opines regarding the release of a co-detenu detained on the basis of the same ground case, all the co-detenues are to be released irrespective of other circumstances. We are stressing upon the fact that such a release is a relevant factor, which should be considered by the State Government and non-consideration of such relevant factor would vitiate the order of confirmation."

7. In the case on hand, it is brought to the notice of this Court that totally six persons were shown as accused in Crime No.1403 of 2020 under Section 8(c) r/w 20(b)(ii)(C), 25 & 29(1) Narcotic Drugs and Psychotropic Substances Act, 1985 and all were arrested and remanded to custody and the allegation is that they were found transporting Ganja on the Theni Main Road-Mudakku Salai Road at about 02.45 p.m, measuring 25 Kgs, which shows that at the time of confirmation order, the revocation order passed by the Advisory Board against the co-accused person was not placed before the Government. So, following the Judgment of the Division Bench of this Court (cited supra), the impugned detention order is liable to be set aside.

8. Further, it is seen from the *proforma* furnished by the learned Additional Public Prosecutor that the representation of the petitioner, dated 26.12.2020 was received on 04.01.2021. Remarks were called for on the same day and it was received on 12.01.2021. The Deputy Secretary dealt with the matter on 12.01.2021. The concerned Minister dealt with the matter on 15.01.2021 and the representation came to be rejected on 18.01.2021. It is seen that in between 04.01.2021 and 12.01.2020, there was a delay of 5 days, after excluding the Government Holidays of 2 days, in considering the petitioner's representation.

9. 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 any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.



10. In the case on hand, as stated supra, the delay of 5 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.

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11. In fine, the order of detention passed by the second respondent, in No.78/BCDFGISSSV/2020, Dated 19.12.2020 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Muneeshwaran @ Root Muneesh, Son of Sivaperumal, aged about 24 years, 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 (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skn

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

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State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St. George,
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2.The Commissioner of Police,
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Madurai City,
Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Superintendent of Prison,
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4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1232 of 2020
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