



HCP(MD)No.801 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 23.09.2022

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.801 of 2022

Tharun

... Petitioner / Detenu

Vs.

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

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

3.The Superintendent,
Trichy Central Prison,
Trichy District.

...Respondents



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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 Cr.M.P.No. 06/2022 dated 28.02.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Tharun, S/o. Thangadurai, aged about 21 years, now confined as “Goonda” at Trichy Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Tharun, son of Thangadurai, aged about 21 years. The detenu has been detained by the second respondent by his detention order in Cr.M.P.No.06/2022 dated 28.02.2022 holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though the learned counsel for the petitioner has raised several other grounds to assail the order of detention, he has mainly focused his argument on the following grounds.

(i) the copy of the remand order has not been furnished to the detenu in vernacular language, despite the same has been sought for by the petitioner in his representation.

(ii) the Detaining Authority, while arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, in paragraph No.5 of the grounds of detention, has referred to the order dated 07.06.2019, passed in a similar case in Cr.M.P.No.2403/2019 by the Principal District and Sessions Judge, Trichy, and in the said case, bail was granted to the accused Chandru. The learned counsel further submitted that the similar case that was referred by the detaining authority is not a similar case and that was the case where there was no previous case against the accused therein, but there are previous cases against the detenu. Therefore,



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according to the learned counsel for the petitioner, non-furnishing of the remand order in vernacular language and the subjective satisfaction arrived at by the detaining authority are totally baseless and reflecting the total non application of mind of the Detaining Authority.

4.The submissions made by the learned Additional Public Prosecutor in reply to the above said contention raised by the learned counsel for the petitioner are also heard.

5.The Detention Order in question was passed on 28.02.2022. The petitioner made a representation dated 25.04.2022. The remarks were called for by the Government from the Detaining Authority on 23.05.2022. The remarks were duly received on 26.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 30.05.2022.

6.It is the contention of the petitioner that there was a delay of 3 days in submitting the remarks by the Detaining Authority and hence there was an inordinate delay of 3 days in submitting the remarks. It is the further



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contention of the petitioner that the remarks were received on 26.05.2022 and there was a delay of 4 days, in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, 2 days were Government Holidays and hence, there was inordinate delay of 2 days in considering the representation.

7.In Rekha vs. State of Tamil Nadu (2011 (5) SCC 244), the Honourable Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

8.In Sumaiya vs. The Secretary to Government (2007 (2) MWN (Cr.) 145), a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

9.In Tara Chand vs. State of Rajasthan and others, reported in



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1980 (2) SCC 321, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10.In the subject case, admittedly, there is an inordinate and unexplained delay of 3 days in submitting the remarks by the Detaining Authority and unexplained delay of 2 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed.

11. On consideration of the submissions made on either side and upon perusal of the documents available on record, especially, the representation made by the petitioner dated 25.04.2022, through which he had sought for the remand order of the District Collector and District Magistrate, Perambalur District. However, the same has not been furnished to the petitioner in vernacular language, which vitiates the order of detention. Further, on perusal of the detention order, especially at Paragraph No.5, we see force in the contention of the learned counsel for the petitioner that though the Detaining Authority, while arriving at a subjective satisfaction,



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has observed that the accused in similar case was released on bail in Cr.M.P.No.2403/2019 except the *ipse dixit* statement of the Detaining Authority, no other materials have been furnished to the detenu as to the bail application filed by the accused in the said case.

(i) Insofar as the bail granted in the similar case, that was taken into consideration by the detaining authority, it is not the similar case since the accused therein did not have any previous case and whereas the present case, the detenu had previous cases and all the bail petitions were dismissed. There was no bail petition pending as on the date when the detention order was passed. Hence, there is a clear non application of mind on the part of the detaining authority.

(ii) Insofar as not providing the Tamil translation of the bail order made in Crl.M.P.No.2403/2019 is concerned, this effectively prevented the detenu from making an effective representation and this has been done inspite of the request made by the detenu seeking for the Tamil translation of the bail order. Therefore, on that score, the order of detention is liable to be set aside.



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12.In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.06/2022 dated 28.02.2022 passed by the second respondent is set aside. The detenu, viz., Tharun, aged about 21 years, son of Thangadurai, is directed to be released forthwith unless his detention is required in connection with any other case.

(J.N.B.,J.) (N.A.V.,J.)
23.09.2022

Index : Yes/No
Internet : Yes
PJJ

To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
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Fort St.George,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
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4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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