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H.C.P.(MD)No.1293 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.06.2023

Pronounced on : 22.06.2023

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

H.C.P.(MD)No.1293 of 2022

Harishpandi

.. Petitioner/Detenu

Vs.

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600009.

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 to
issue a writ of Habeas Corpus, to call for the entire records relating to the
Detention Order passed by the 2nd respondent in No.



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53/BCDFGISSSV/2022 dated 12.07.2022 and quash the same and direct the respondents to produce the person or body of the detenu, by name, Harishpandi, son of Poomari, aged about 21 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.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

K.K.RAMAKRISHNAN, J.

The detenu has involved in the crimes like extortion and robbery etc., and hence he was arrested on 24.05.2022 in the ground case in Crime No.231 of 2022. From the cases registered against the petitioner, the detaining authority arrived at a subjective satisfaction that the detenu habitually doing the offence of committing extortion and robbery, which is detrimental to the social interest and slapped the impugned detention order after following the due procedure and applying the statutory requirement under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug offenders, Forest-offenders,



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Goondas, Immoral Traffic Offenders, Sand offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (hereinafter called as “the Tamilnadu Act 14 of 1982) by branding the detenu as 'GOONDA'. Challenging the same, the petitioner has filed the present Habeas Corpus Petition.

2. The learned counsel for the petitioner raised the following points and seeks for the indulgence of this Court to quash the impugned detention order:

2.1. Eventhough the petitioner was arrested on 24.05.2022, the detention order was passed only on 12.07.2022 and hence, the 40 days delay in passing the detention order has not properly explained by the detaining authority and hence, the detention order is liable to be quashed.

2.2. The learned counsel for the petitioner submitted that he made a request to give legal assistance before the Advisory Board by sending representation dated 26.07.2022 and the same was not considered by the Advisory Board. So, there is a violation of Article 22 of the Constitution of India.



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3. Per contra, Mr.A.Thiruvadikumar, learned Additional Public Prosecutor submitted that he is involved in number of cases and hence, the delay in passing the detention order legally consumed time in order to collect all the connected materials. Further, the Sponsoring Authority collected materials consist of 354 pages from various sources and translate the relied document in both vernacular as well as English and thereafter prepared 11 number of booklets running pages around 3575 pages and each booklet contains 354 pages. Hence, the delay is bonafide one. The learned Additional Public Prosecutor submitted that the detenu has no right to seek the legal assistance before the Advisory Board, apart from that the detenu did not annexed any proof for the proper representation sent to the Advisory Board. **Further, it is not the case of the detenu that the detaining authority appeared through legal personality and the detenu was not allowed to represent through the legal practitioner and hence, he seeks for the dismissal of this Habeas Corpus Petition.**

4. This Court has considered the rival submissions made by the learned counsel on both side and perused the materials placed on record and the precedents relied by the learned counsel on record.



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5. Delay in passing the detention order:

As pointed out by the learned Additional Public Prosecutor, neither in the Constitution nor in the Act 14 of 1982, there is no time limit fixed to invoke the detention order. Even after released on bail, detention order can be passed. In this aspect, the law laid down by the Hon'ble Supreme Court from the following judgment is as follows:

5.1. T.A. Abdul Rahman v. State of Kerala, reported in 1989(4)

SCC741:

"There is no denying the fact that the impugned order has been passed after lapse of 11 months from the date of seizure of the eleven gold biscuits from the back courtyard of the house of the detenu. As repeatedly pointed out by this Court that there is no hard and fast rule that merely because there is a time lag between the offending acts and the date of order of detention, the causal link must be taken to be snapped and the satisfaction reached by the detaining authority should be regarded as unreal, but it all depends upon the facts and circumstances of each case and the nature of the explanation offered by the detaining authority for the delay that had occurred in passing the order. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention."

7. In Hemlata Kantilal Shah v. State of Maharashtra [(1981)4 SCC 647.

"Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a



person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily examined by the detaining authority."

5.2. In Yogendra Murari v. State of U.P [(1988) 4 SCC 559],

Hon'ble Supreme Court has reiterated the earlier view consistently taken and held as follows:

"It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention."

5.3. The Hon'ble Supreme Court in Rajendrakumar Natvariat

Shah v. State of Gujarat, reported in **AIR 1988 SC 1255** has held as follows:

"10. Viewed from this perspective, we wish to emphasise and make it clear for the guidance of the different High Courts that a distinction must be drawn between the delay in making of an order of detention under a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. 1974 and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution. It has been laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously in cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange and



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Prevention of Smuggling Activities Act, 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security of the nation, the courts should not merely on account of delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. Taking of such a view would not be warranted unless the court finds that the grounds are "stale" or illusory or that there is no real nexus between the grounds and the impugned order of detention"

5.4. 2020 SCC Online Mad 17237 [P.Suganthi v. State of Tamilnadu rep., by the Additional Chief Secretary to Government and Others].

"26. It is to be noted that the Honourable Apex Court, in the decisions cited by the learned counsel for the petitioners as well as the learned Additional Public Prosecutor, has consistently held that the issue of delay is to be decided on case to case basis. Considering the facts of this case and taking note of the principles of law laid down in the decisions referred supra, we opine that the petitioners have not made out a case to quash the impugned order on the ground of delay."



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6. From the above law enunciated, it is clear that the delay in passing the detention order from the date of arrest is not *ipso facto* to quash the detention order when the explanation on the side of the detaining authority is acceptable and the delay is reasonable one.

7. In this case, as rightly pointed out by the learned Additional Public Prosecutor and also explained in the counter affidavit, the sponsoring authorities collected number of the documents relating to the above crime numbers including the relied document and thereafter translated the same into vernacular as well as English and also obtained the certified copy of various documents like remand order and also the procedure of preparation of 11 number of copies running approximately 3575 pages legally consumed the time of 40 days. The sponsoring authority, after collecting all the materials, submitted the original to the detaining authority on 12.07.2022 and the detaining authority upon perusal of the originals and apply his mind and passed the detention order on 12.07.2022. The said delay, according to this Court, is bonafide, when the requirement to invoke the detention order against the detenu by branding him as "Goonda" is necessary in view of keeping the



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public order. Hence, the argument of the learned counsel for the petitioner that the delay in passing the detention order is not properly explained cannot be accepted.

8. As per Section 11(5) of the Act, the detenu has not entitled to appear before the Court along with legal practitioner. Further, it is the case of the petitioner that he sent a representation to the Advisory Board to seek for the legal assistance. This Court perused the typeset of papers filed along with the Habeas Corpus Petition in the typeset of papers the said representation neither contains signature of the detenu nor annexed with the any acknowledge of postal receipt. Further, there is no material produced before this Court either to presume or infer that the detenu sent representation to the Advisory Board. As per the Hon'ble Supreme Court judgment reported in 2005(9)SCC 65 [Kirti Kumar Nirula v. State of Maharashtra], undated and unsigned representation cannot be treated as a representation within the meaning of Article 22(5) of the Constitution of India. The said circumstances, the case of the detenu that he had send the representation to the Advisory Board seeking the legal practitioner is factually not proved. Apart from that the law laid down by the Hon'ble Supreme Court in **A.K.Roy Vs. Union of India and others** reported in



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(1982) SCC (CrI)152, held as follows:

“93. We must therefore hold, regretfully though, that the detenu has no right to appear through a legal practitioner in the proceedings before the Advisory Board. It is, however, necessary to add an important caveat. The reason behind the provisions contained in Article 22(3)(b) of the Constitution clearly is that a legal practitioner should not be permitted to appear before the Advisory Board for any party. The Constitution does not contemplate that the detaining authority or the government should have the facility of appearing before the Advisory Board with the aid of a legal practitioner but that the said facility should be denied to the detenu. In any case, that is not what the Constitution says and it would be wholly inappropriate to read any such meaning into the provisions of Article 22. Permitting the detaining authority or the government to appear before the Advisory Board with the aid of a legal practitioner or a legal adviser would be in breach of Article 14, if a similar facility is denied to the detenu. We must therefore make it clear that if the detaining authority or the government takes the aid of a legal practitioner or a legal adviser before the Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner. We are informed that officers of the government in the concerned departments often appear before the Board and assist it with a view to justifying the detention orders. If that be so, we must clarify that the Boards should not permit the authorities to do indirectly what they cannot do directly; and no one should be enabled to take shelter behind the excuse that such officers are not “legal practitioners” or legal advisers. Regard must be had to the substance and not the form since, especially, in matters like the proceedings of Advisory Boards, whosoever assists or advises on facts or law must be



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deemed to be in the position of a legal adviser. We do hope that Advisory Boards will take care to ensure that the provisions of Article 14 are not violated in any manner in the proceedings before them. Serving or retired Judges of the High Court will have no difficulty in understanding this position. Those who are merely “qualified to be appointed” as High Court Judges may have to do a little homework in order to appreciate it.”

9. As per the law laid down by the Hon'ble Supreme Court, it is not the case of the petitioner that the Government is represented through the legal practitioner or Head of the Department with sufficient legal language whereas the petitioner is not allowed to represent through the advocate and hence, the plea of the petitioner cannot be accepted. In all aspect, there is no merit in the contention of the petitioner and hence, the Habeas Corpus Petition is dismissed.

[R.S.K.,J.] & [K.K.R.K., J.]
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Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

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2. The Commissioner of Police,
Office of the Commissioner of Police,
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4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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**R.SURESHKUMAR, J.
and
K.K.RAMAKRISHNAN, J.**

PJL

**Predelivery made in
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