



H.C.P.(MD) No.1303 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

H.C.P.(MD)No.1303 of 2022

Konamandaiyan @ Gunasekaran

... Petitioner / Detenue

(Now, confining at Madurai Central Prison)

Vs.

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

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

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

...Respondents



H.C.P.(MD) No.1303 of 2022

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 passed in Detention Order No.62 / 2022 dated 19.07.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the body of person of the detenu by name Konamandaiyan @ Gunasekaran, S/o.Vellaipandi, aged about 41 years, now detained as “Goonda” at Madurai Central Prison, before this Court and set him at liberty.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadi Kumar,

Additional Public Prosecutor

ORDER

(Order of the Court was made by ***R.SURESH KUMAR, J.***)

The petitioner is the detenu, namely, Konamandaiyan @ Gunasekaran, S/o.Vellaipandi, aged about 41 years, who has been detained by the 2nd respondent by his proceedings in Detention Order No.62 / 2022 dated 19.07.2022, 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.



H.C.P.(MD) No.1303 of 2022

2.The case as projected by the petitioner on behalf of the detenue is that the detenue was arrested on 22.06.2022 in the adverse case for the alleged offences punishable under Sections, 387 and 306 I.P.C. On the same day or next day morning another case was registered against him for the offence punishable under Section 307 IPC, which is a ground case by way of P.T.Warrant he has already been arrested on 22.06.2022.

3.Thereafter, Act 14 of 1982 was invoked against the detenue and the detention order was passed on 19.07.2022.

4.In this context, though several grounds have been raised by the learned counsel appearing for the petitioner to assail the impugned detention order dated 19.07.2022, one among the grounds was that there has been a clear violation of Section 10 of Act 14 of 1982.

5.Enlarging his arguments, he further submitted that under Section 10 of the Act 14 of 1982, within a period of three weeks from the date of detention order, all materials including the representation submitted on behalf of the detenue shall be placed by the State Government before the



H.C.P.(MD) No.1303 of 2022

Advisory Board and thereafter, it is for the Board to take a call of the situation and to give opinion to the State Government within a period of seven weeks.

6.In this context, the learned counsel for the petitioner would contend that this question was specifically raised by the petitioner in the ground 'u' of the affidavit filed in support of this Habeas Corpus Petition, where he has stated that there is no cogent material reveals that on which date the 1st respondent placed all the documents relating to the detention before the Advisory Board and on which date the Advisory Board received the same. The detainee wants said particulars for enabling him to come to know whether the mandatory provisions are followed by the authorities or not.

7.In respect of this specific ground raised by the petitioner in the affidavit as stated supra in paragraph No.8 of the counter affidavit the 2nd respondent has stated that all the relevant materials the detention, including the representation and reply sent to him ie., the detainee were placed before the Advisory Board on 27.08.2022 by the 1st respondent as ordered by the Advisory Board as per Section 10 of the Act 14 of 1982.



H.C.P.(MD) No.1303 of 2022

WEB COPY

8. Therefore, there is a clear reply given by the respondents in their counter affidavit, stating that in order to comply with the mandatory requirements under Section 10 of the Act 14 of 1982, those documents were placed before the Advisory Board on 27.08.2022.

9. Therefore, the learned counsel for the petitioner would submit that if it was placed only on 27.08.2022, it is beyond three weeks from the date of detention order dated 19.07.2022. Therefore, there is a clear violation of Section 10 of the Act 14 of 1982. Therefore, on this ground atleast the impugned order can be assailed successfully by the petitioner, he contended.

10. The learned Additional Public Prosecutor appearing for the respondents has relied upon the paragraph No.2 of the counter affidavit and submitted that 27.08.2022 is only the date of meeting of the Advisory Board. Therefore, it cannot be construed as the date on which the materials placed before the Advisory Board within the meaning of Section 10 of the Act 14 of 1982.



H.C.P.(MD) No.1303 of 2022

11.We have considered the submissions made on either side and perused the materials available on record.

12.Though such an attempt has been made by the learned Additional Public Prosecutor for the respondents to justify the stand taken by the respondents that the date of meeting of the Advisory Board cannot be construed as a date on which the materials had been placed by the State Government within the meaning of Section 10 of the Act 14 of 1982, a clear reply given in paragraph No.8 as stated supra in the counter affidavit, which is the reply in respect of the ground raised in 'u' filed by the petitioner in the Habeas Corpus Petition, has made it very clear that only on 27.08.2022 the papers have been placed before the Advisory Board within the meaning of Section 10 of the Act 14 of 1982 as it has been specifically averred in the said reply by way of counter affidavit filed by the 2nd respondent on behalf of the respondents. Therefore, it is beyond three weeks mandatory time as contemplated under Section 10 of the Act 14 of 1982.

13.Though it was argued by the learned Additional Public Prosecutor for the respondents that 27.08.2022 is the date of meeting and it is not a date of that materials placed before the Advisory Board, this Court



H.C.P.(MD) No.1303 of 2022

finds that even in paragraph No.2 of the counter affidavit, it is merely stated that the date of Advisory Board but does not reveal that it was meeting of the Advisory Board. Assuming that it was a meeting of the Advisory Board, that cannot be a date for supply of materials as contemplated under Section 10 of the Act 14 of 1982.

14. Therefore, we have no hesitation to hold that Section 10 of the Act 14 of 1982 has been violated in this case. In that view of the matter, on that ground alone, the impugned detention order would not sustain in the legal scrutiny. Accordingly, the impugned detention order passed by the 2nd respondent in Detention Order No.62 / 2022, dated 19.07.2022 is set aside. In the result, this Habeas Corpus Petition is allowed. As a sequel, there shall be a direction to the 3rd respondent to set the detainee, namely, Konamandaiyan @ Gunasekaran, S/o.Vellaipandi, aged about 41 years, at free, if his presence in the jail is not required for any other cases.

(R.S.K., J.) & (K.K.R.K, J.)
28.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
MYR



WEB COPY



H.C.P.(MD) No.1303 of 2022

R.SURESH KUMAR, J.

AND

K.K.RAMAKRISHNAN, J.

MYR

To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.
- 3.The Superintendent of Prison,
Madurai Central Prison, Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P.(MD)No.1303 of 2022

28.03.2023