



WEB COPY



HCP(MD)No.1372 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 12.06.2023
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.1372 of 2022

Raja .. Petitioner/Detenu
Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600009.

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

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 connected with the Detention Order passed by the 2nd respondent in No. B.C.D.F.G.I.S.S.S.V.No. 53/2022 dated 28.07.2022 and quash the same and direct the respondents to produce the person or body of the detenu, by name, Raja, son of Ravi, aged about 25 years, now detained as “Goonda” at Madurai Central Prison, before this Court and set him at liberty forthwith.



WEB COPY



HCP(MD)No.1372 of 2022

For Petitioner
For Respondents

: Mr.R.Alagumani
: Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

K.K.RAMAKRISHNAN, J.

The detenu has involved in the crimes like murder for gain and burglarizing etc., and hence he was arrested on 18.05.2022 in the ground case in Crime No.96 of 2022. The detaining authority upon considering his involvement in Crime No.65 of 2022 under Sections 457, 380, 394 and 302 IPC and Crime No.95 of 2022 under Sections 457 and 380 IPC and the propensity of the above incident, passed the impugned detention order against the petitioner under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (hereinafter called as “the Tamilnadu Act 14 of 1982). Challenging the same, the petitioner has filed the present Habeas Corpus Petition.

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



HCP(MD)No.1372 of 2022

2.1. The detaining authority in the impugned order did not inform about his right of making representation to the detaining authority within 12 days in the impugned detention order and hence, his right of making representation to the detaining authority is deprived and hence, there is an infraction of Article 22 (5) of the Constitution of India. To buttress his argument, he placed reliance upon the following judgements:

I. Kamleshkumar Ishwardas Patel Vs. Union of India and Others reported in **1995 (4) SCC 51.**

II. State of Maharashtra and Others Vs. Santosh Shankar Acharya reported in **2000 (7) SCC 463.**

III. S.Thai vs. State rep. by The Commissioner of Police, Tiruchirappalli City, Tiruchirappalli & Others reported in **2000 (3) MWN(cri) 142.**

IV. Konsam Brojen Singh Vs. State of Manipur and Others reported in **2006 (2) Gau LR452.**

V. Kamal Khare and Ors. State of M.P. and Others reported in **2021 (2) MPLJ 554.**

2.2 He further submitted that in the State preferred appeal against judgment of this Court reported in 2000(3) MWN(cri) 142 and the same was



HCP(MD)No.1372 of 2022

confirmed by the Hon'ble Supreme Court Bench consisting of three judges and hence, the Government issued notice to all the District Collectors to follow the procedure of informing the right of the detenu to make the representation to the detaining authority within a period of 12 days from the date of passing of the detention order. Even after that the detaining authority did not comply said requirement and hence, he seeks for the quash of the detention order.

3. Per contra, Mr.A.Thiruvadikumar, learned Additional Public Prosecutor fairly submitted that the judgment of **Thai case** was confirmed by the Hon'ble Supreme Court and the Government had also issued the circular to follow the guidelines of the Hon'ble Supreme Court and specifically directed to incorporate the detention order regarding the right of making the representation to the detaining authority. Inadvertently, the same was omitted by this District Collector and he further submitted that the detenu made the representation to the State Government and hence there is no prejudice caused to the petitioner for the non-information of the above said right to make representation to the detaining authority and hence he prayed for the dismissal of this Habeas Corpus Petition. He also submitted that the detenu is involved in number of cases, ie., murder for gain, robbery and extortion cases and seeks for dismissal



HCP(MD)No.1372 of 2022

of this Habeas Corpus Petition affirming the subjective satisfaction of the detaining authority on the remaining grounds.

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.

5.1. The question arises for consideration in this case is that *whether the detention order is liable to be quashed on account of the failure of detaining authority to inform the right of detenu to make representation to the detaining authority within 12 days from the date of detaining in the detention order?*

5.2 **Article 22 (5)** states that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and ***shall afford him the earliest opportunity of making a representation against the order.***



6. From the above constitutional provision, even though the constitution does not specify the authority to whom the detenu would make the representation, the Constitution Bench of the Hon'ble Supreme Court in **Kamleshkumar Ishwardas Patel Vs. Union of India and Others** reported in **1995 (4) SCC 51** has held as follows:-

“38. Having regard to the provisions of [Article 22\(5\)](#) of the Constitution and the provisions of the [COFEPOSA Act](#) and the PIT NDPS Act the question posed is thus answered : Where the detention order has been made under [Section 3](#) of the COFEPOSA Act and the PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation.”



7. So, it is imperative on the part of the detaining authority to specify the authorities to whom the detenu would make the representation and the said requirement is applicable to the all detention laws and hence, the Hon'ble Supreme Court in **State of Maharashtra v. Santosh Shankar Acharya** reported in (2000) 7 SCC 463 : 2000 SCC (Cri) 1400 has applied the above principle in the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981, and held as follows:-

“5.Non-communication of the fact to the detenu that he could make a representation to the detaining authority so long as the order of detention has not been approved by the State Government in a case where an order of detention is issued by an officer other than the State Government under sub-section (2) of Section 3 of the Maharashtra Act would constitute an infraction of a valuable right of the detenu under Article 22(5) of the Constitution and the ratio of the Constitution Bench decision of this Court in Kamleshkumar case [(1995) 4 SCC 51 : 1995 SCC (Cri) 643] would apply notwithstanding the fact that in Kamleshkumar case [(1995) 4 SCC 51 : 1995 SCC (Cri) 643] the Court was dealing with an order of detention issued under the provisions of the COFEPOSA Act.”

8. The said similar issue was came up for hearing before the Coordinate Bench of this Court, in **S.Thai vs. State rep. by The**



HCP(MD)No.1372 of 2022

Commissioner of Police, Tiruchirappalli City, Tiruchirappalli & Others

reported in **2000 (3) MWN(Cri.) 142**, where the said Bench held that the detenu must have informed his right of making representation to the detaining authority within 12 days. The said co-ordinate Bench considered the judgment reported in **2000 7 SCC 463** and held that the said requirement is form part of the detunu's right of making representation.

9. The said judgement in S.Thai vs. State rep. by The Commissioner of Police, Tiruchirappalli City, Tiruchirappalli & Others reported in 2000 (3) MWN(Cri.) 142, challenged by the State Government before the Hon'ble Supreme Court in CrI.A.No:728 of 2000. The Hon'ble Supreme Court re-affirmed the ratio **State of Maharashtra v. Santosh Shankar Acharya** reported in **(2000) 7 SCC 463** in the following terms;

“Mr.Altaf Ahmad, the learned Additional Solicitor General tried his level best to persuade us to take the view that the law laid down by this Court in the Constitution Bench judgment in Kamlesh Kumar's case (supra) was in relation to an order of detention under COFEPOSA and the law under COFEPOSA and NDPS Act provides different scheme than the scheme engrafted in the National Security Act or other Preventive Detention Laws including the Maharashtra Act as well as the Tamil Nadu Act. According to him, Article 22(5) of the



WEB COPY



HCP(MD)No.1372 of 2022

*Constitution of India confers right of earliest representation, to a detenu but does not provide as to who is the authority to whom a representation could be made and, therefore, there is no bar for the Legislature to provide a specific authority to whom a representation could be made and in a case where the Legislature have provided such authority to whom a representation could be made, then it cannot be said that the detenu has still a right of making a representation to the detaining authority. Though this argument sounds attractive but does not sustain on a larger constitutional perspective and on examining the rights of a detenu to make a representation to an authority which is the only right offered to a detenu. **We are conscious of the fact that by interpreting the provisions as has been interpreted by us in Cr1.A. No. 596/2000, several dangerous detenus may have to be released, but yet the consequences will not bind us ... interpreting a constitutional provision as well as different provisions of the Act in question and having examined and re-examined the different decisions relied upon by us in Cr1. A. No. 596/2000, we are not persuaded to take a different view than what has been taken. Accordingly, the Special Leave Petitions and the Criminal Appeal stand dismissed. The view taken by us in Cr1. A. No. 596/2000 is re-affirmed.***

10. Similar question raised before the Hon'ble Bench of Five Judges of **Quwahati High Court** in **2006 (2) Gau LR 452**. The Hon'ble Judges have held as follows :-



WEB COPY



HCP(MD)No.1372 of 2022

“57.For all the aforesaid reasons, we hold:

(1) That a detainee has two rights under Article 22(5) of the Constitution:

(i) to be informed, as soon as may be, the grounds on which the order of detention is passed, i.e., the grounds which led to the subjective satisfaction of the detaining authority, and

(ii) to be afforded the earliest opportunity of making a representation against the order of detention. The twin rights are available to a detainee whether they are provided for or not in the preventive detention laws.

(2) The right to make representation to the detaining authority by a detainee in addition to his right to file representation to the Central Government or appropriate Government is also guaranteed under Article 22(5) of the Constitution which forms part of package of guaranteed fundamental right. No distinction as such could be made in this regard in respect of the detention orders made either under COFEPOSA, PIT NDPS or National Security Act, 1980, as the case may be.

(3) The detaining authority is under the constitutional obligation to inform the detainee of his right to make such a representation to the detaining authority.

(4) The failure to inform the detainee of such right to make representation to the detaining authority vitiates the detention order made even under the provisions of the National Security Act, 1980.”



HCP(MD)No.1372 of 2022

11. Hence, in view of law laid down in **State of Maharashtra v. Santosh Shankar Acharya** reported in (2000) 7 SCC 463 was re-affirmed by the Hon'ble three Judges bench of the Supreme Court in CrI.A.No:728 of 2000, this court is inclined to accept the contention of the learned counsel for the detenu that the detaining authority in the impugned detention order has not informed the right of detenu to make a representation before the detaining authority within 12 days, which resulted in infraction of Article 22 of Constitution of India. so, the impugned detention order is liable to be quashed.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.V.No.53/2022 dated 28.07.2022, passed by the second respondent is set aside. The detenu, Raja, aged 25 years, son of Ravi, is directed to be released forthwith unless his detention is required in connection with any other cases.

[R.S.K.,J.] & [K.K.R.K., J.]
. 22.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
PJJL



WEB COPY



HCP(MD)No.1372 of 2022

**R.SURESHKUMAR, J.
and
K.K.RAMAKRISHNAN, J.**

PJL

To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600009.

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

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

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

**Pre-delivery order made in
H.C.P(MD)No.1372 of 2022**

22.06.2023