



HCP(MD)No.175 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 11.07.2024

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

H.C.P.(MD)No.175 of 2024

Balaganesh

*(now confined at Palayamkottai
Central Prison)*

... Petitioner / Detenu

Vs.

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

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

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

... Respondents

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 M.H.S.Confdl No.192/2023



HCP(MD)No.175 of 2024

dated 23.12.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Balaganesh, son of Balaiah, aged about 25 years, detained as “Goonda” at Palayamkottai Central Prison, now confining at Palayamkottai 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

(Order of the Court was made by A.D.JAGADISH CHANDIRA,J.)

The petitioner is the detenu viz., Balaganesh, aged about 25 years, S/o.Balaiah. The detenu has been detained by the second respondent by his order in M.H.S.Confdl No.192/2023 dated 23.12.2023 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. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner focused mainly on the ground of non-placement of representation sent by the detenu through his Advocate



HCP(MD)No.175 of 2024

before the Advisory Board. According to the learned counsel for the petitioner, the detenu, after passing the detention order, on 04.01.2024, had sent a representation to the Detaining Authorities through his Advocate seeking to quash the detention order. Subsequently, the detenu had sent another representation to the Detaining Authority through his Advocate on 02.02.2024, seeking to quash the detention order passed against him and it has been received by the third respondent. But, the said representation has neither been considered by the respondents nor placed before the Advisory Board, which vitiates the impugned detention order. He would further submit that a specific averment has been made by the petitioner in this regard in the grounds of the affidavit filed in support of the Habeas Corpus Petition. Therefore, he prays for setting aside the impugned detention order.

3. The learned counsel for the petitioner, in support of his contentions, has placed reliance upon the decision of this Court in the case of *Viji vs. The Commissioner of Police, Greater Chennai*, reported in *(2003) M.L.J. (Crl.) 571*.



HCP(MD)No.175 of 2024

4. The learned Additional Public Prosecutor appearing for the respondents, on instructions, would submit that the representations of the detenu dated 04.01.2024 and 02.02.2024 have been received by the third respondent and the same has not been forwarded to the Government and that the Government, while approving the detention order, has referred to only about the oral representation of the detenu.

5. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

6. On perusal of the records, we find that the detenu had sent a representation to the Detaining Authority on 04.01.2024 through his Advocate, seeking to quash the detention order passed against him. The said representation was sent with a covering letter on 03.01.2024 to the third respondent and it has been received by the third respondent on 04.01.2024. Subsequently, the petitioner had sent another representation to the first respondent on 02.02.2024 through his Advocate by a covering letter dated 01.02.2024 to the third respondent and the same has been received by the



HCP(MD)No.175 of 2024

third respondent on 02.02.2024. The petitioner has also filed delivery reports as proof of the same. However, the said representations have not been considered and forwarded to the Government by the prison authorities. The Government, vide G.O.No.23 dated 03.01.2024 and G.O.No.1634 dated 21.03.2024, while approving the detention order, has referred to only about the oral representation of the detenu and has not mentioned about the written representations dated 04.01.2024 and 02.02.2024, thereby, it can be inferred that the said representations were not placed before the Advisory Board.

7. In *Viji's* case (cited supra), the Division Bench of this Court, while considering the issue as to whether the non-placement of the representation of the detenu sent by him against his order of detention before the Advisory Board would vitiate the order of detention, has held that it is imperative on the part of the Government to put any representation made by the detenu challenging the detention before the Advisory Board. Further, it has been held that it is not for the Government to choose as to which representation should be put before the Advisory Board and which representation should not be put before it and it is not the choice of the Government. The direction



HCP(MD)No.175 of 2024

of the law is loud and the clear that every representation which has been made prior to the meeting of the Advisory Board must be put before the Advisory Board. Therefore, we are of the considered view that the non-placement of the representation sent by the detenu before the Advisory Board vitiates the impugned detention order and the same is, therefore, liable to be set aside.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl No.192/2023 dated 23.12.2023 passed by the second respondent is set aside. The detenu, viz., Balaganesh, S/o.Balaiah, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(A.D.J.C.,J.) (K.R.S.,J.)
11.07.2024

NCC : Yes / No
Index : Yes / No
Lm



HCP(MD)No.175 of 2024

To

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



WEB COPY



HCP(MD)No.175 of 2024

A.D.JAGADISH CHANDIRA,J.
and
K.RAJASEKAR,J.

Lm

H.C.P.(MD)No.175 of 2024

11.07.2024