



H.C.P(MD)No.1406 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.01.2024

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

H.C.P(MD)No.1406 of 2023

Subramaniyan

... Petitioner

vs.

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

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

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of the respondent No.2 in Detention Order No.P.D.O.11/2023 dated 07.06.2023 and quash the same and direct



H.C.P(MD)No.1406 of 2023

the respondents to produce the body or person of the detenu by name Ranjith @ Ranjithkumar, son of Subramaniyan aged about 30 years, now confining as "Goonda" at Trichy Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Rameshkumar

For R1 to R3 : Mr.S.Ravi, Additional Public Prosecutor

ORDER

[Order of the Court was made by **K.K.RAMAKRISHNAN, J.**]

This petition is filed on behalf of the detenu, who is accused in Crime No.114 of 2023 registered for the offences under Sections 147, 148, 294(b), 336, 341, 342, 323, 302, 506(ii) IPC by the third respondent police and the detenu has been detained by the second respondent by his order dated 07.06.2023 in P.D.O.No.11/2023 holding him to be a "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders, Forest Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982 (Herein after referred to as 'the Tamilnadu Act 14 of 1982'). The said detention order is under challenge in this Habeas Corpus Petition.



WEB COPY

2. The case of the prosecution is that on 07.04.2023 around 11.15 p.m in the Semathupatti Branch Road, the detenu/accused along with co-accused waylaid one Vigneswaran and jointly committed brutal murder of the said Vigneswaran and therefore, the Law Enforcing Authority registered a case in Crime No.114 of 2023 for the offences as stated above. Thereafter, all the accused were arrested by the Law Enforcing Authority and considering the propensity of the occurrence and the same was created panic in that locality, the detaining authority passed the detention order on the basis of the materials furnished by the sponsoring authority through the impugned detention order dated 07.06.2023.

3. The learned counsel for the petitioner assailed the impugned detention orders that as per Section 8(1) of the Tamilnadu Act 14 of 1982, the documents relied by the detaining authority must have been furnished to the detenu within five days and same was not served within five days. On further elaborating the said submission, he submitted that the detaining authority passed the detention order on 07.06.2023 and the booklet was furnished to the detenu only on 16.06.2023. Hence, the same was not served within five days as per the provisions under Section 8(1)



H.C.P(MD)No.1406 of 2023

of the Tamilnadu Act 14 of 1982. Therefore, he prayed for quashing the detention order.

4. Countering the said submission, the learned Additional Public Prosecutor submitted that materials had to be collected and time was consumed in this exercise. So the delay is neither wilful nor wanton and hence, the delay is to be condoned.

5. This Court considered the rival submissions made on both side and perused the materials placed on record.

6.1. For better appreciation of the submission of the learned counsel for the petitioner, it is relevant to extract Section 8(1) of the Tamilnadu Act 14 of 1982:

"8.(1)When a person is detained in pursuance of a detention order, the authority making the order shall, **as soon as may be, but not later than five days from the date of detention**, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government."



WEB COPY

6.2. The section requires interpretation of a literal and natural meaning. The rule is well established that where a particular time is given from a certain date within which the act is to be done, the day on that date is to be excluded [(1972 (1) SCC 639)(Haru Das Gupt v. State of West Bengal)]. The same was expressly stated in Section 9 of the General Clauses Act which read as follows:

"9. Commencement and termination of time.

(1)In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from' and, for the purpose of including the last in a series of days or any other period of time, to use the word 'to'.

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

6.3. The Hon'ble Supreme Court in 1999 (4) SCC 228(Jasbir Singh v. Lt.Governor, Delhi and another), considering the impari materia provision of COFEPOSA laid down the law that the date of the detention order to be excluded.

"3.Coming to the first question as to whether by serving the grounds of detention on 30th March, 1994 there has been



WEB COPY



H.C.P(MD)No.1406 of 2023

an infraction of Sub-section (3) of Section 3, the learned counsel appearing for the appellant urged that the order of detention having been served on 25th March, 1994 the grounds were required to be served within 5 days there from i.e. on 29th March, 1994 and not on 30th March, 1994 as has been factually done. According to the learned counsel the day on which the order of detention was served cannot be excluded for computing the period of 5 days within which the grounds of i detention is required to be served under Sub-section (3) of Section 3 of the Act. This question no longer remains res Integra, This Court in the case of Haru Das Gupta v. The State of West Bengal, was considering an identical provision under West Bengal Prevention of Violent Activities Act, 1970 and the Court held that the Rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that day is to be excluded, The effect of defining period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. The Court in coming to the aforesaid decision relied upon some English decisions and held that in computing the period, the date of commencement of detention that the first day has to be excluded. In the case in hand, therefore, for computing the period of 5 days the date 25th March, 1994 has to be excluded and so being done there is no infraction of Subsection (3) of Section 3 of the Act when the grounds were served on 30th March, 1994. The High Court, therefore rightly rejected the said contention urged before it."



WEB COPY

6.4. In the case of **P.Sivakami v. The State of Tamilnadu**, reported in **2012(2) LW CrI 679**, this Court has held as follows:

"6. Even though we are inclined to set aside the impugned detention order on the above two grounds, we are inclined to go into the ground raised by the learned counsel for the Petitioner that the provisions of Section 8(1) of the Act has been violated and therefore the detention order is liable to be set aside. According to the learned counsel for the Petitioner, as per Section 8(1) of the Act, the documents pertaining to the order of detention should be served on the detenu within five days from the date of the order but, it was served on him with a delay of one day and hence the detention order is liable to be set aside on this ground. Admittedly, in the present case, the detention order was passed on 27.04.2012 and all the documents pertained to the detention order were served on the detenu on 02.05.2012 A bare reading of Section 8(1) of the Act, would clearly reveal that the date on which the detention order was passed has to be excluded. It is trite law that while interpreting statutes a literal, simple and natural meaning will have to be given. Considering the word "from" as occurred in Section 9 of the General Clauses Act, 1897, it has been held by the Hon'ble Apex Court in Tarun Prasad Chatterjee v. Dinanath Sharma. - (2000) 8 SCC 649, as under in paragraph Nos. 10 to 12.

"10. Section 9 of the General Clauses Act 1897 gives



statutory recognition to the well established principle applicable to the construction of statutes that ordinarily in computing the period of time prescribed, the rule observed is to exclude the first and include the last day.

11. In Halsbury's Laws of England, 37th Edn., Vol.3, p. 92, it is stated as follows:

"Days included or excluded.— When a period of time running from a given day or even to another day or event is prescribed by law or fixed as contract, and the question arises whether the computation is to be made inclusively or exclusively of the first mentioned or of the last mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as 'from such a day' or 'until such a day' are whether the inclusion or the exclusion of the day named may be intended. As a general rule, however, the effect of defining a period in such a manner is to exclude the first day and to include the last day."

12. Section 9 says that in any Central Act or regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any period of time, to use the word "to". The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word "from" is used indicating the beginning, the opening day is to be excluded and if the last day is to be



WEB COPY



H.C.P(MD)No.1406 of 2023

included the word "to" is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. For instance, if a policy of insurance has to be good for one day from 1st January, it might be valid only for a few hours after its execution and the party or the beneficiary in the insurance policy would not get reasonable time to lay claim, unless 1 January is excluded from the period of computation."

7. Considering the ratio laid down by the Hon'ble Apex Court, we are of the view that the date of detention order will have to be excluded for the purpose of calculating five days period, which has been mentioned under Section 8(1) of the Act, for communicating documents pertaining to the detention order. Therefore, this contention of the learned counsel for the Petitioner is liable to be rejected and accordingly rejected."

7. From the above, it is clear that while computing the period of five days as per Section 8(1) of the Tamilnadu Act 14 of 1982, the date of detention has to be excluded and the date of service must be included. In this case, applying the said principle, by excluding the date of detention order, namely, 07.06.2023 the booklet copy is not served within 5 days as required by Section 8(1) of the Tamilnadu Act 14 of 1982, whereas it has been served only on 16.06.2023 at 10.00 a.m. Therefore, the impugned



H.C.P(MD)No.1406 of 2023

detention order is liable to be set aside.

WEB COPY

8. Accordingly, this Habeas Corpus Petition is allowed and the detention order of the respondent No.2 in Detention Order No.P.D.O. 11/2023 dated 07.06.2023, is quashed and the detenu Thiru.Ranjith @ Ranjithkumar, son of Thiru.Subramaniyan aged about 30 years, now confining as "Goonda" at Trichy Central Prison, is directed to be released forthwith unless his custody is required in any other case / cases. There shall be no order as to costs.

(J.N.B., J.)

(K.K.R.K., J.)

08.01.2024

Index : Yes / No

Neutral Citation : Yes / No

bala

To

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

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

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



H.C.P(MD)No.1406 of 2023

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



WEB COPY



H.C.P(MD)No.1406 of 2023

J.NISHA BANU, J.
and
K.K.RAMAKRISHNAN, J.

bala

ORDER MADE IN
H.C.P(MD)No.1406 of 2023
DATED : 08.01.2024