



H.C.P.(MD) No.1584 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2024

CORAM:

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

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Sudalaikumar
(Now confining at Palayamkottai Central Prison) ... Petitioner

-VS-

1.The Principal 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,
Tenkasi District,
Tenkasi.

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



H.C.P.(MD) No.1584 of 2023

WEB

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 of the Respondent No.2 in M.H.S.Confdl No.82/2023, dated 17.11.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Sudalaikumar, son of Kadarkarai, aged about 37 years, now detained as "Goonda" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The petitioner is the detenu viz., Sudalaikumar, son of Kadarkarai, aged about 37 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.82/2023, dated 17.11.2023 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. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.



H.C.P.(MD) No.1584 of 2023

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3. The learned counsel appearing for the petitioner would submit that the date of hearing of the advisory board was fixed on 21.12.2023, whereas, the intimation about the date was served on the petitioner only on 16.12.2023, which was on Saturday and thereby, he was able to inform his relatives only on the next working i.e., on 18.12.2023, which was on Monday, however, within 2 days the detenu has to be taken to Chennai for appearance before the Board and thereby sufficient time was not given to the detenu to inform his relatives well in advance for making an effective representation before the board, thereby the detention order is vitiated. In support of his contention, the learned counsel for the petitioner would rely on the order passed by this Court in H.C.P(MD)No.444 of 2014 **John vs. The State rep. by the Secretary to Government** and the relevant portions are extracted hereunder:-

"43. In the detention order, when the detenu was permitted to avail the assistance of his friend or relative, if he so desirous, at the time of personal hearing before the Advisory Board, provided that his friend or relative, is no an Advocate and that the detenu has to make his own arrangement to get his friend or relative to be present, at the time of personal hearing before the



H.C.P.(MD) No.1584 of 2023

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Advisory Board, it is desirable also to state that his case would be considered within three weeks from the date of detention, so that he can make his own arrangements within such time.

44. Instead of finding fault with the detenu, who had not represented before the Advisory Board that he was not given adequate time, considering the right conferred on him, we are of the humble view, it is for the competent authorities, to give sufficient time, between the date of intimation and the date scheduled for the meeting of the Advisory Board, so as to enable him to either discuss the matter with anyone through the Superintendent of Prisons. The detenu has to inform his friend or relative, the nature of accusation made against him, discuss with him, for which, adequate time has to be given. Opportunity given should be real and now ritualistic. It should be effective and not illusory. A mere ritual would be an empty formality and not an opportunity. It would be a pretence or make belief. Opportunity given also includes reasonable notice of hearing, to avail the assistance of a friend or relative.

46. Reverting back to the case on hand, though the Advisory Board had fixed the personal hearing on 12.05.2014 at 12.00 Noon, the detenu had been intimated only on 09.05.2014 at 13.50 hours, by the Additional Superintendent of Police, Central Prison, Madurai. As 09.05.2014 was a Friday and the ensuing



H.C.P.(MD) No.1584 of 2023

WEB COPY

days, 10.05.2014 and 11.05.2014 were Saturday and Sunday, we are of the view that the detenu was not given sufficient time to contract any of his friends or relatives to assist him, to put forth his case, before the Advisory Board."

4. The learned Additional Public Prosecutor appearing for the respondents would submit that an intimation was given to the petitioner on 16.12.2023 and the date of hearing before the Advisory Board was fixed on 21.12.2023 and there was 5 days in between which was a reasonable and sufficient time and moreover, his relative had also made the representation before the Advisory Board.

5. In this case, as pointed out by the learned counsel for the petitioner, intimation regarding the meeting of the advisory board on 21.12.2023 had been served on the detenu on 16.12.2023, which was Saturday and thereby he was able to inform the same to his relatives only on 18.12.2023, which was the next working day. Meanwhile, he was taken on transit to Chennai on 20.12.2023 itself. We find that the time given is not adequate and sufficient, thereby, the



H.C.P.(MD) No.1584 of 2023

detention order stands vitiated. We, therefore, have no hesitation in quashing the impugned detention order.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.82/2023, dated 17.11.2023, passed by the second respondent is set aside. The detenu, viz., Sudalaikumar, aged about 37 years, son of Kadarkarai, is directed to be released forthwith unless his detention is required in connection with any other case.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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[A.D.J.C., J.] [K.R.S., J.]
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H.C.P.(MD) No.1584 of 2023

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Madurai Bench of Madras High Court,
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H.C.P.(MD) No.1584 of 2023

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AND
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