



HCP(MD)No.1176 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On :28.04.2025

Delivered On :30.04.2025

CORAM

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

H.C.P.(MD)No.1176 of 2024

Pandi @ Senthoorapandi

.. Petitioner /Detenu

Vs.

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-600 009.

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

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

.. Respondents

Petition filed under Article 226 of the Constitution of India, to issue a writ of Habeas Corpus, to call of the records connected with the detention



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order no.75 of 2024 dated 23.07.2024 on the file of the respondent No.2 and quash the same, consequently directing the respondents to produce the body or person of the detenu by name Pandi @ Senthoorapandi, son of Nagaraj, aged about 31 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner :Mr.S.Malaikani

For Respondents :Mr.S.Ravi
Additional Public Prosecutor

ORDER

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

The preventive detention order dated 23.07.2024 passed against the petitioner is under challenge in this Writ of Habeas Corpus.

2.On the complaint given to the Thadikombu Police Station on 29.06.2024 by one Ragul, aged 24 years, for snatching 1 $\frac{3}{4}$ sovereign of gold chain from him, case in Crime No.214 of 2024 under Section 392 IPC registered against 3 unknown persons. In this connection, the petitioner was



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arrested by Thadikombu Police on 01.07.2024 at about 05.30 pm. The petitioner gave a confession statement voluntarily wherein he admitted his involvement in two other chain snatching cases registered by Thadikombu Police in Cr. No.09 of 2023 and Cr.No.179 of 2024. Based on his confession, 32 grams of gold ingot was recovered. Since the conduct of the petitioner prejudicial to the maintenance of public order, to have a desired effect of preventing him from indulging in such activities, the detention order was passed on 23.07.2024.

3.The said detention order is challenged on the ground that the detaining authority has not applied his mind to the records and he had failed to give reasons for his subjective satisfaction to invoke the power of preventive detention. The petitioner did not file any bail petition, while so, the detaining authority had recorded that there is real possibility of coming out on bail. The detention order is silent, when the sponsoring authority submitted the particulars inviting the detention order. The ground case as well as the two adverse cases referred in the detention order are against unknown persons. None of the complainant either in the ground case or in the adverse cases had identified this petitioner. For the statistic purpose and



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to close the undetected chain snatching cases, the petitioner been falsely implicated in Cr.No.214 of 2024 and linked to other two old cases.

4.The representation of the detenu dated 21.08.2024 given to the authorities not placed before the Advisory Board. There was unexplained delay in considering the representation by the Government.

5.The complaint in the ground case does not disclose any disturbance to public order. In fact, according to the complainant in the ground case while he was studying alone in a tamarind grove at about 13.30 hrs, his chain was snatched by 3 unknown persons, who came in a two wheeler. The place of occurrence is not a place of public gathering or business establishment. The complaint of Ragul does not say that soon after the incident, public got panic and there was disturbance to public order. Therefore, the subjective satisfaction of the detaining authority to invoke detention order is bad in law.

6.The learned counsel for the petitioner further submitted that in one of the adverse case registered in Cr.No:09 of 2023, the de-facto complainant



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Mr.Murugan had turned hostile and he had not supported the case of the prosecution regarding the identity of the accused.

7.The learned Additional Public Prosecutor appearing on behalf of the respondents filed counter which explains the application of mind and the process taken for the subjective satisfaction. The recovery of 32 grams of ingot from the residence of this petitioner and his confession that the said ingot belongs to the victim in Cr.No:09 of 2023. The learned Public Prosecutor submitted that the reasons stated is sufficient to hold that the petitioner if allowed to be free may repeat the crime.

8.The learned Additional Public Prosecutor submitted that the detention order clearly mentions about the case pending against the detenu and the materials placed by the sponsoring authority namely the Sub-Inspector of Police, Taluk Police Station, considered and recorded the satisfaction why detention order should not be passed against the detenu/ writ petitioner. No doubt subsequent to the detention order, in one of the adverse case, the witness has turned hostile. Failure to identify the accused in the Court after identifying him during investigation cannot be a reason to



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allege that the detention order lack application of mind. The recovery of gold ingot weighing 32 grams from the petitioner based on his confession is sufficient to hold that the petitioner is an habitual chain snatcher and his presence in public will endanger the peace and may cause panic in the minds of the public.

9.Heard the learned counsels appearing on either side.

10.The dates and events furnished by the Additional Public Prosecutor along with the records perused. The records reveal that, Ragul, S/o.Murugan, had given complaint to the police on 29.06.2024 intimating the chain snatching incident occurred on 26.06.2024. The arrest of the petitioner in connection with the case of snatching the chain of Ragul, S/o. Murugan, is on 01.07.2024. The detention order is on 23.07.2024. The detenu had received the grounds of detention and copies of documents relied, through the Prison Superintendent on 24.07.2024 at about 4.00 pm. In the detention order, it is specifically informed to the detenu that he has right to give representation to the District Collector within 12 days from the date of detention or /and if he wish to give representation to the State

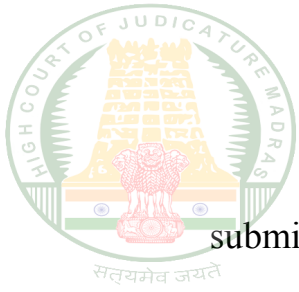


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Government, his representation should address the Principal Secretary to the Government. He has also the right to give representation to the Chairman, Advisory Board.

11.The detenu had sent representation on 21.08.2024 to all the authorities. By the time he sent his representation, the detaining authority has become *functus officio*. The Government on receipt of the representation on 29.08.2024 had considered the representation, but rejected and order of rejection despatched on 12.09.2024. The rejection letter received by the prison authorities on 18.09.2024 and served to the detenu on the same day.

12.The records placed by the Additional Public Prosecutor further discloses that, the Inspector of Police, Dindigul Taluk Police Station, who sponsored the preventive detention of the petitioner had placed his Affidavit to the Detaining authority on 22nd July, 2024. We note from the affidavit that the sponsoring letter does not contain any enclosure of documents. The District Collector has passed the detention order on the next day ie 23.07.2024. The Detention order served to the petitioner on 23.07.2024 at 16.00 hrs. The grounds of detention served on 28.08.2024. The detenu had



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submitted his representation to all the three authorities on 21.08.2024. The Advisory Board which met on 28.08.2024 has confirmed the detention on 08.10.2024. At the same time, the Government which has received the representation of the detenu on 29.08.2024 had rejected the request on 12.09.2024 and served to the detenu on 18.09.2024.

13.Regarding the rejection of representation by the Government, the delay between 29.08.2024 (the date on which the representation received) and 18.09.2024 (the date on which the rejection order served on the detenu), intervening public holidays of 7 days is cited as reason for delay.

14.This Court on close scrutiny of the break up, find that the representation has taken 7 days to move from the seat of ASO/SO to Deputy Secretary/Joint Secretary of the Home Department. From 02.09.2024 to 07.09.24 only two days were public holidays. The delay is not explained. In this regard, it is relevant to recollect the Constitution Bench judgment of the Hon'ble Supreme Court in ***K.M.Abdulla Kunhi and B.L.Abdul Khder –vs- Union of India and others (1991 (1) SC 476)***, in which, the Court has observed:-



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"It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay".

15.Following this, in ***Rajammal vs State Of Tamil Nadu And Another, AIR 1999 SC 684***, the Apex Court again observed,

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable cause".



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16.Following the above principle laid by the Supreme Court, this

Court in ***Umaiya v. Secretary to the Government***, held even 3 days delay if not explained will render the detention order illegal. This Court then on, consistently being following this dictum and if the delay is not properly explained, the detention orders are quashed on that sole ground.

17.In the case on hand, the impugned order of detention came to be passed on 23.07.2024. A representation was made to all the authorities including the Government on 21.08.2024. After receiving the representation and obtaining the remarks from the sponsoring authority and detaining authority, the file has moved from Assistant Section Officer to the Under Secretary only on 02.09.2024. From Under Secretary to the Deputy Secretary another 7 days. Finally, the rejection order prepared on 11.09.2024, despatched on 12.09.2024 and received by the detenu only on 18.09.2024. The explanation for delay is intermittent holidays for totally 7 days between 31.08.2024 and 07.09.2024. This explanation does not justifies the inordinate delay of keeping the file moving towards the top.



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18.This Court also finds that there is lack of application of mind by the detaining authority regarding the likelihood of getting bail in these cases, when the detenu had not filed any bail petition till the detention order passed. We are not oblivious of the practise that in cases of this nature, the accused are advised to wait for some time for the heat to cool. Therefore, filing of bail petition which is a statutory right for any undertrial prisoner, may not come immediately after arrest, but some time later. However such reasonable belief that the likelihood of filing bail petition and getting bail must be based on some material and also to be linked that if such event happens, the presence of the accused/detenu will be prejudiced to the public order. We are of the firm opinion that mere likelihood of getting bail is not sufficient to keep a person under detention preventively.

19.On examining the detention order, we find there is no material to show that the conduct of the detenu had caused any panic or fear in the mind of the public. The threat to public peace is not made out through the material placed. A mechanical reproduction of the phrase without material is liable to be disregarded and the detention order is liable to be quashed on this ground.



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20. In ***Regina v. District Collector, (Madras High Court order dated***

21.12.2018), in the detention order it was stated that there is an imminent possibility that the detenu could be released on bail since in similar case bails are granted by the appropriate Courts. However, the detenu had not filed any bail application which was pending before any Court. Therefore, the Court concluded that the impugned order suffered from non application of mind and is liable to be set aside. Similar to *Regina case*, in the case in hand, on the date of detention order, there was no bail petition filed or pending. Therefore, on this score also the detention order is liable to be quashed.

21. As a result, the Habeas Corpus Petition stands allowed. The detenu by name Pandi @ Senthoorapandi, S/o.Nagaraj, aged about 31 years, is directed to be released forthwith, if he is not under judicial custody in the ground case or any other case pending against him.

[G.J., J.] & [R.P., J.]
30.04.2025

NCC :Yes/No
Index:Yes/No
Ns



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State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The District Collector/District Magistrate,
Office of the District Collector/District Magistrate,
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.



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