

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.08.2022

Delivered on : 21.09.2022

Coram

The Hon'ble Mr. Justice **S.VAIDYANATHAN**
and
The Hon'ble Mr. Justice **A.D.JAGADISH CHANDIRA**

H.C.P. No.297 of 2022

Manokaran

... Petitioner

Vs.

1. State of Tamil Nadu rep. by
The Additional Chief Secretary
to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
2. The District Collector and
District Magistrate,
O/o.The District Collector and
District Magistrate,
Nagapattinam District,
Nagapattinam.
3. The Superintendent of Police,
Nagapattinam District,
Nagapattinam.
4. The Superintendent,
Special Prison for Women,
Tiruchirappalli.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus calling for the entire records in

connection with the detention order passed in C.O.C.No.12/2022 dated 28.1.2022 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's wife namely Muthulakshmi, w/o Manokaran, female, aged 38 years, who is detained in Special Prison for Women, Tiruchirappalli before this court and set her at liberty.

For Petitioner : Mr.K.A.S.Prabhu
For Respondents : Mr.Mohamed Ali Jinnah,
State Public Prosecutor
assisted by
Mr. M.Babu Muthumeeran
Addl. Public Prosecutor

ORDER

**S.VAIDYANATHAN, J.,
and
A.D.JAGADISH CHANDIRA, J.,**

***"Criminals / Convicts are to be treated with respect,
even though they may not deserve it."***

The present Habeas Corpus Petition is filed to call for the entire records in connection with the detention order passed in C.O.C.No.12/2022 dated 28.1.2022 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's wife namely Muthulakshmi, w/o Manokaran, female, aged 38 years, who is detained in Special Prison for Women, Tiruchirappalli before this court and set her at liberty.

2. It is the case of the petitioner that his wife was detained in preventive detention pursuant to the order passed by the second respondent dated 28.1.2022 as a "Bootlegger".

3. The petitioner had raised the following grounds for setting aside the detention order:-

i) The detenu was arrested and produced before the Judicial Magistrate I, Nagapattinam on 8.12.2021, but, the detaining authority had passed the detention order against the detenu on 28.1.2022 with a delay of 50 days and that too without mentioning reasons for the delay.

ii) The sponsoring authority has failed to inform the arrest of the detenu in ground case to the family members of the detenu, which is in violation of Article 22(1) of the Constitution of India and the dictum laid down by the Apex Court in ***D.K.Basu vs. State of West Bengal*** (1997) 1 SCC 416.

iii) Despite the fact that the bail petition filed on behalf of the petitioner in Crl.M.P.No.33 of 2022 before the Sessions Court, Nagapattinam was dismissed, the detaining authority has erred in observing that there is a real and imminent possibility of the detenu coming out on bail, which is a clear case of non-application of mind on the part of the detaining authority.

iv) The detention order came to be passed on 28.1.2022, however, the booklet was issued after five days without following the procedures contemplated under Section 8(1) of the Act 14/1982.

4. When the matter came up for hearing on **21.7.2022**, it was brought to the notice of this court by the learned Additional Public Prosecutor that the Advisory Board has opined that there is no sufficient cause for detention and thereby the order of detention has been revoked by the Government. However, it was represented by the learned counsel for the petitioner that the Government order of revocation had not been communicated to the petitioner till date and the detenu was in continued detention. Finding some seriousness in the issue, the matter was listed on 25.7.2022 to enable the Additional Public Prosecutor to get instructions.

5. On 25.7.2022, when the matter was taken up for hearing, the **Government order of revocation dated 22.7.2022** was produced by the respondents, a perusal of which revealed that the matter was placed before the Advisory Board and the Advisory Board, as early as on 16.3.2022 had opined that there is no sufficient cause for detention of

the petitioner's wife Muthulakshmi, however, the revocation order came to be passed **only on 22.7.2022** that too, after the indulgence of this court and thereby the detenu had been detained illegally/unauthorisedly for **more than four months** from 16.3.2022.

6. This court, while ordering for immediate release of the detenu, directed the first respondent to file a Report stating the reason for the delay in passing the revocation order and identifying the person, who is responsible for the delay.

7. When the matter was called on 28.7.2022, a non-speaking Affidavit was filed by the respondents neither disclosing any reason for the delay nor pointing out name of any official, who is responsible for the delay, but, merely contending that there is no intention on the part of the first respondent to disobey the orders of this court and that departmental action has been initiated against the Assistant Section Officer and Section Officer concerned. Hence, by way of one more opportunity, time was granted to file a better affidavit.

8. Accordingly, an Affidavit dated 3.8.2022 came to be filed by the first respondent contending as under:-

"(ii) It is further submitted that the Advisory Board heard the case on 15.03.2022 and opined that there is no sufficient cause for the detention of Tmt.Muthulakshmi and the report of the board was received in Government on 16.03.2022. The file was submitted immediately to revoke the detention of Tmt.Muthulakshmi by the Assistant Section Officer and Section Officer on 16.03.2022 and it was approved by the Under Secretary and Deputy Secretary on the same day itself. Then the file was circulated to the Minister (Electricity, Prohibition and Excise) 16.03.2022 and the Minister approved the file on 17.03.2022, but the file was received by this department only on 22.07.2022.

It is also submitted that action has been initiated against Tmt.K.Ahamaduneesa, Assistant Section Officer and Thiru.A.Venkatesan, Section Officer under relevant rule of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, for failing to follow up file with the Minister's office for getting back the file bearing C.No.2133/Home, Prohibition & Excise (XV)/2022 which was circulated to the Minister's office on 16.03.2022.

After duly following the stipulated procedures, necessary further action will be taken against erred staff."

9. In such a background, learned counsel appearing for the Petitioner Mr.K.A.S.Prabhu would submit his arguments as under:-

i) The impugned detention order did not stand the test of the Advisory Board and it was opined by the Advisory Board on 16.3.2022 that that there is no sufficient cause for detention of the petitioner's wife Muthulakshmi, however, the revocation order came to be passed **only on 22.7.2022**, in clear violation of Article 21 of the Constitution of India which protects the life and personal liberty of a citizen

ii) When the Constitution assures that no person shall be deprived of his personal liberty except according to procedure established by law, in this case, the petitioner's wife had been unnecessarily and illegally detained for a period of 128 days without any authority of law and thereby, the detinue is entitled to award of compensation.

iii) The detinue is a victim, who has suffered illegal detention on account of lapses on the part of the Government and the petitioner has filed the Habeas Corpus Petition, which itself is a public law proceedings and thereby, the detinue is entitled to compensation.

iv) It is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody and the precious right guaranteed by [Article 21](#) of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law and in such event, the High Court, being a protector of the civil liberties of the citizen, has not only the power and jurisdiction to release the prisoner but also an obligation to grant relief of compensation for unlawful and illegal detention in exercise of its jurisdiction under Articles 226 of the Constitution to the victim.

10. Mr.Mohamed Ali Jinnah, learned Public Prosecutor assisted by Mr. M.Babu Muthumeeran, learned Additional Public Prosecutor would submit that there was some administrative delay on the part of the officials in getting the file approved for passing the order of revocation after the receipt of opinion from the Advisory Board. He would further submit though no intention could be attributed on the part of the officials, the erring officials have been proceeded with departmentally for dereliction and appropriate action would be taken against them. He would further submit that the petitioner could very well pursue the remedy in seeking compensation under the civil law and the relief of compensation in this petition can be rejected.

11. Heard the learned counsel appearing for the parties and perused the materials available on record.

12. Since the order of detention passed against the petitioner stands revoked as of now and the petitioner has been released, this court feels that it need not harp on the validity and correctness of the detention order. It is a case where the detenu was detained pursuant to an order dated 28.01.2022. However, in the opinion of the advisory board dated 16.03.2022 that no sufficient cause is available for the detention of the detenu, the Government order of revocation came to be passed only on 22.07.2022. What has to be seen here is whether the detenu is entitled to any compensation and if so, the quantum of such compensation ?

"Those who deny freedom to others, deserve it not for themselves" -Abraham Lincoln.

13. The sequence of events in the case on hand reveals beyond any doubt that it is a classic case of bureaucratic lethargy and slumber, which has played a lot in depriving the personal liberty of a citizen guaranteed

under Article 21 of the Constitution of India. To understand the gravity of the scenario, we need to have a look into the relevant legal provisions and the guidelines and restrictions thereupon.

14. Section 12(2) of the Tamil Nadu Act 14 of 1982 reads as under:-

*"(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the State Government **shall revoke** the detention order and cause the person to be **released forthwith**."*

15. As per Section 12(2) of Act 14 of 1982, when the Advisory Board opined and reported that there is no sufficient cause for detention of the person concerned, the State Government **shall revoke** the detention order and cause the person to be **released forthwith**, whereas, in this case, as stated above, the petitioner has been **released after a period of 128 days**.

"No freedom is higher than personal freedom and no duty is higher than to maintain it unimpaired."

16. Personal liberty of a citizen has been very much guaranteed under Article 21 of the Constitution of India, which reads as under:-

"21. Protection of life and personal liberty.

*No person shall be deprived of his life or personal liberty
except according to procedure established by law."*

17. A bare perusal of the above provision makes it clear that the protection extended by it covers all **Persons**. The expression "**Person**" is not to be confined only to citizens but, it extends to every person regardless of the circumstance in which a person is placed. It implies that the protection guaranteed under the above provision extends even to persons who are undergoing imprisonment as a convict prisoner and he does not lose his fundamental rights merely because he is convicted either as a convict prisoner or detained pursuant to a preventive detention order.

18. A person, if at all, could be deprived of his life or personal liberty only in accordance with the procedure established by law. The scope of Article 21 appears to had been a bit narrow till 1950s and

thereafter, it was expanded gradually. The procedure established by law to deprive of life or personal liberty of a person cannot be arbitrary, unfair, unreasonable one or it cannot be whimsical and fanciful.

19. The terms "**shall revoke**" and "**released forthwith**" in **Section 12(2) of Act 14 of 1982** read together express a strong assertion of the legislature in protecting the personal liberty as guaranteed under the Constitution of India. Whether such intention has been properly appreciated by the respondents in the case on hand is the question posed before us.

20. We can least appreciate if the delay had occurred in various levels to end with the revocation order, whereas, the records produced before us and the submission made on behalf of the respondents reveal that on receipt of opinion from the Advisory Board 16.3.2022, the file was immediately circulated for approval and it was, accordingly, approved by the Ministry on 17.3.2022, however, the revocation order was passed by the office only on 22.7.2022 after the matter was seized of by this court and only after the displeasure shown by the court on 21.7.2022 and not prior to that especially, when the Habeas Corpus Petition stands admitted and notice was ordered on 22.2.2022 itself and it was directed to be

listed on 19.4.2022.

21. The sequence of events speaks much despite the slumber on the part of the bureaucracy, which had taken away the personal liberty of the petitioner. The Hon'ble Division Bench of the Delhi High Court in a case of similar circumstances in ***Pramod Kumar Garg @ Ravinder Chandhok vs. Union of India and others*** (1994) 29 DRJ (DB) 464; 1994 SCC online Del 346 has held as under:-

"10. It has been held that the Act is valid under Article 22 of the Constitution, and, therefore, one has to refer to the provisions of the Act itself for the purpose of passing of the order of detention, the detention, the opinion of the Advisory Board, and action on that by the detaining authority. It is apparent, therefore, that the moment opinion of the Advisory Board is received that there is no sufficient cause for the detention of the detenu, the detaining authority" shall revoke the detention order and cause the person to be released forthwith". The law as laid does not contemplate any exceptions and we cannot read into this law the case put by the respondents

that in spite of opinion of the Advisory Board that there is no sufficient cause for the detention of a person, the detaining authority has, no doubt, to revoke the detention order but that could be done within three months of the date of detention of the detenu irrespective of the fact when opinion of the Advisory Board was received, and that once the detention order is revoked it is for the jail authorities where the person is confined to release him "forthwith". We do not think such proposition could ever have been advanced by the respondents. Of course, we are not unmindful of the fact that once the opinion of the Advisory Board is received the detenu is not to be released at once and time is required to meet administrative exigencies. As to what the expression "as soon as may be" or the word "forthwith" mean, the Supreme Court has already laid down the guidelines."

In this case as stated above the administration has acted with utmost lethargy, thereby keeping the detenu unnecessarily in prison for four months.

22. In ***Nilabati Behera vs. State of Orissa*** (1993) 2 SCC 746, a

Three Judges Bench held as under:-

"This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under [Article 21](#) of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings. Of course, relief in exercise of the power under [Article 32](#) or 226 would be granted only once it is established that there has been

an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with [Rudul Sah v. State of Bihar and Anr.](#), [1983] 3 SCR 508 granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under [Article 32](#) or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the Courts have molded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under [Article 21](#) is

concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply And the courts have to act firmly but with certain amount of circumspection and self restraint, lest proceedings under [Article 32](#) or 226 are misused as a disguised substitute for civil action in private law."

23. In **D.K.Basu vs. State of W.B.** (1997) 1 SCC 416, the Apex Court has held as under:-

"The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages of tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the

indefeasible rights guaranteed under Article 21 of the Constitutions is remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation or the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen."

24. In a recent decision in the case of **Bhola Kumhar vs. State of Chhattisgarh**, 2022 SCC OnLine SC 837 the Hon'ble Apex Court has held that when a person is detained beyond reasonable date it would be imprisonment or detention sans sanction of law and would thus not only violate Article 19(d) but also Article 21 of Constitution of India and thereby held such a person is entitled for compensation in terms of

money. The Apex Court has also without making any observation as to civil remedy has passed an order granting compensation to be paid by the State in terms of money holding it vicariously liable for the act committed by its officers in the course of employment.

25. While it is the duty of the court to see that any individual, who crosses the boundaries carved out by law is dealt appropriately, it is also the foremost duty of the courts to uphold the dignity of personal liberty. Taking cue from the above judgements and having found that the detenu has been kept in illegal detention for 128 days, we direct the State to pay a sum of Rs.5,00,000/- to the detenu Tmt. Muthulakshmi w/o Thiru. Manokaran residing at North Nalliyanthottam, Velipalayam & post, Velipalayam police station limit, Nagapattinam taluk, Nagapattinam District, to the detenu towards compensation within 6 weeks from the date of receipt of copy of this order and such amount can be adjusted towards any amount which may be awarded to the detenu by way of damages in the event of the detenu filing any Civil Suit. With the above observation and direction, the Habeas Corpus Petition is closed.

(S.V.N.,J.) (A.D.J.C.,J.)
21.09.2022

Index: Yes/No
ssk.

To:

1. The Additional Chief Secretary
to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

2. The District Collector and
District Magistrate,
O/o.The District Collector and
District Magistrate,
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Nagapattinam.

3. The Superintendent of Police,
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4. The Superintendent,
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5. The Public Prosecutor,
High Court, Madras.

**S.VAIDYANATHAN, J.,
and
A.D.JAGADISH CHANDIRA, J.,**

ssk.

P.D. ORDER IN
H.C.P. No.297 of 2022

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