



WEB COPY

H.C.P.(MD) No.148 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2020

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

H.C.P. (MD) No.148 of 2020

G.Ananthi ... Petitioner/Wife of the detenu

-vs-

- 1.The State of Tamil Nadu, represented by
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate
Office of the District Collector and District Magistrate,
Tiruchirappalli District, Tiruchirappalli.
- 3.The Superintendent,
Central Prison, Tiruchirappalli. ... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus calling for the entire records in Detention Order passed in Cr.M.P.No.18 of 2020 dated 15.2.2020 on the file of the second respondent and to set aside the same as illegal and direct the respondents to produce the body or person of the Petitioner's husband namely Gopal @ Kunju Gopal, Son of Mohan, male aged about 26 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor



O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

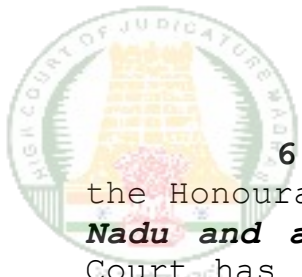
This habeas corpus petition has been filed by the wife of the detenu, namely, Gopal @ Kunju Gopal, Son of Mohan, male aged about 26 years, who has been detained by the Detention Order of the Second Respondent, dated 15.2.2020 made in Cr.M.P.No.18 of 2020, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2.Heard Mr.K.A.S.Prabhu, learned counsel appearing for the Petitioner and Mr.V.Neelakandan, learned Additional Public Prosecutor, appearing for the respondents and perused the materials available on record.

3.Though several grounds are raised to assail the impugned Detention Order, it is mainly contended by the learned counsel for the Petitioner that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India have not been followed in this case and the representation of the Petitioner was not considered and there is unexplained and inordinate delay in disposal of the petitioner's representation, which would vitiate the impugned order of detention.

4.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, appearing for the respondents would argue that the Detention Order came to be passed by the second respondent after seeing the gravity of the offence and having satisfied with the materials furnished by the Sponsoring Authority. Accordingly, the learned Additional Public Prosecutor would submit that there is no infirmity or irregularity in the order of Detention, warranting interference by this Court. It is also stated that the delay has been explained and even if there is any delay, it caused no prejudice to the detenu.

5.In the case on hand, aggrieved over the Detention Order, dated 15.2.2020. the petitioner made a representation to the first respondent on 25.02.2020 and it was received on 27.02.2020. Remarks were called for on 28.02.2020 and it was received only on 20.03.2020. The Deputy Secretary dealt with the matter on 23.03.2020. The concerned Minister dealt with the matter on 24.3.2020 and the representation came to be rejected on 26.03.2020. It is seen that in between 28.02.2020 and 20.03.2020, there was a delay of 20 days, after deducting 7 Government Holidays, delay of 13 days have not been explained by the respondents. Further, in similar facts, this Court quashed the Detention Orders passed against the co-accused in H.C.P(MD)Nos.190 and 191 of 2020.



6. At this juncture, it is useful to refer the decision of the Honourable Apex Court in the case of **Rajammal vs. State of Tamil Nadu and another**, reported in **1999 (1) SCC 417**, wherein the Apex Court has observed and held that it is for the Authority concerned to explain the delay, if any, in disposal of the representation and if any delay was caused on account of nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

7. In the case on hand, as stated supra, the delay of 13 days in considering the representation of the petitioner has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside solely on the ground of delay by following the decision of the Honourable Apex Court referred supra.

8. In fine, the Habeas Corpus Petition is allowed. The detention order in Cr.M.P.No.18 of 2020, dated 15.02.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Gopal @ Kunju Gopal, son of Mohan, aged about 26 years, who is now detained at Central Prison, Tiruchirappalli is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

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

<https://hcservices.ecourts.gov.in/hcservices/>



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

3.The Superintendent,
Central Prison,
Tiruchirappalli.

4.The Joint Secretary to Government,
Public (Law and Order),
Fort St. George, Chennai -09.

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

ORDER MADE IN
H.C.P. (MD) No.148 of 2020
19.08.2020

vsn
SDS (31.08.2020) 4P-6C