



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2020

CORAM:

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

H.C.P. (MD) No.180 of 2020

Kayalvizhi

... Petitioner

-vs-

1.The State rep.by

The Principal Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-9

2.The Commissioner of Police

Tiruchirappalli City, Trichy

3.The Superintendent

Central Prison, Trichy

4.The Inspector of Police

Ariyamangalam P.S.
Trichy City

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying to call for records in C.No.03/Detention/C.P.O/T.C/2020, dated 01.02.2020 and issue a writ, order or direction more particularly in the nature of writ of habeas corpus or any other order or direction, directing the respondents herein to produce the detenu Muthukumar, son of Late.Sekar, aged 26 years, who has been termed as "Goonda" and now confined in Central Prison, Trichy and set aside the same and set the detenu at liberty.

For Petitioner : Mr.T.Senthil Kumar

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor



O R D E R

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

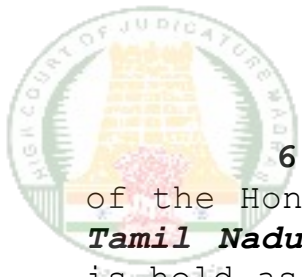
This habeas corpus petition has been filed by the mother of the detenu, namely, Muthukumar, son of Late.Sekar, aged 26 years, challenging the detention order in C.No.03/Detention/C.P.O/T.C/2020, dated 01.02.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Mr.T.Senthil Kumar, learned counsel for the petitioner, would argue that even though the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representation. It is submitted 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 there is unexplained and inordinate delay in disposal of the petitioner's representation, which would vitiate the impugned order of detention.

3. Mr.V.Neelakandan, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. It is also stated that even if there is any delay in disposal of the representation, it has not caused any prejudice to the rights of the detenu and hence, prayed for dismissal of the habeas corpus petition.

4. Heard both sides and perused the materials available on record.

5. In the instant case, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 20.02.2020 and it was received on 24.02.2020. Remarks were called for on 25.02.2020 and it was received on 26.02.2020. The Deputy Secretary dealt with the matter on the same day i.e.26.02.2020. The concerned Minister dealt with the matter on 16.03.2020 and the representation came to be rejected on the same day i.e.16.03.2020. It is seen that in between 26.02.2020 and 16.03.2020, there was a delay of fourteen days, after excluding the Government Holidays of five days, in considering the petitioner's representation.



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 it is held as follows:

"7. 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 consideration 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 preempted from explaining the 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 caused. This position has been well delineated by a Constitution Bench of this Court in *M.M.Abdulla Kunhi v. Union of India*, 1991 (1) SCC (Cri) 613. The following observations of the Bench can profitably be extracted here: (SCC 484, Para 12)

"It is a Constitutional mandate commanding the authority concerned 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 dispose of with a sense of urgency without any avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the Detention Law concerned within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the Constitutional imperative and it would render the continued detention impermissible and illegal."

<https://hcservices.ecourts.gov.in/hcservices/> The position, therefore, now is that if delay



was caused on account of nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

7. In the case on hand, as stated supra, the delay of fourteen 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 C.No.03/Detention/C.P.O/T.C/2020, dated 01.02.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Muthukumar, son of Late.Sekar, aged 26 years, who is now detained at Central Prison, Trichy, 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)

krk

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 Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
- 2.The Commissioner of Police,
Tiruchirappalli City, Trichy.
- 3.The Superintendent,
Central Prison, Trichy.
- 4.The Inspector of Police,
Ariyamangalam P.S.,
Trichy City.
5. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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KM(CO)
TR(21.08.2020) 5P 7C