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H.C.P.(MD) No.192 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P.(MD) No.192 of 2020

Ismail : Petitioner/Father of the detenu

-vs-

1. The State of Tamil Nadu, rep. by
Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Fort. St. George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Dindigul District.
3. The Superintendent of Central Prison,
Madurai,
Madurai District. : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records relating to the detention order passed by the second respondent in detention order in No.13 of 2020 dated 10.02.2020 and quash the same and direct the respondents to produce the detenu namely Ibram sha, S/o.Ismail, aged about 35 years now detained at Central Prison, Madurai before this Court and set him at liberty.

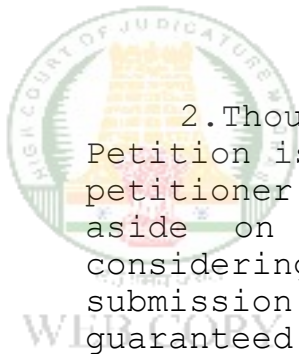
For Petitioner : Mr.D.Venkatesh

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The father of the detenu namely Ibram sha, S/o.Ismail, who has been detained under Act 14 of 1982 branding him as 'Goonda' has filed the present Habeas Corpus Petition to set aside the detention order passed by the second respondent in detention order in No.13 of 2020, dated 10.02.2020.



2. Though the detention order impugned in the Habeas Corpus Petition is assailed on several grounds, the learned counsel for the petitioner mainly contented that the detention order is liable to be aside on the ground of inordinate and unexplained delay in considering the representation of the petitioner. It is the submission of the learned counsel that the procedure of safeguards guaranteed under Article 21 and 22 of the Constitution has been violated and on this sole ground, the detention order is liable to be quashed.

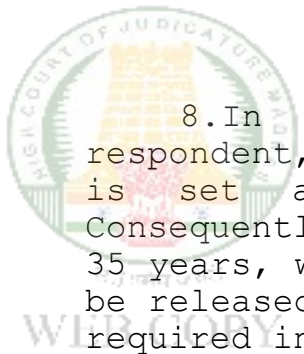
3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, submitted that the detention order came to be passed based on the cogent materials placed by the sponsoring authority and there is no illegality or irregularity in the detention order warranting interference of this Court. It is further stated that the delay in considering the representation caused no prejudice to the detenu and prayed for dismissal of this Habeas Corpus Petition.

4. We have heard the rival submissions and perused the materials available on records.

5. In the present case, the detenu was detained by the order of the second respondent, dated 10.02.2020. Against the same, a representation dated 27.02.2020 was given and the same was received by the first respondent on 02.03.2020 and remarks were called for on 02.03.2020 and it was received on 09.03.2020. The Deputy Secretary dealt with the same on 10.03.2020 and by the concerned Minister on 17.03.2020 and it was rejected on 17.03.2020. It is seen that there was delay of 07 days in between 10.03.2020 and 17.03.2020. It is also seen that there are 2 Government holidays and after excluding the same, there is a delay of 5 days in considering the representation of the detenu.

6. In the case of **Rajammal vs. State of Tamil Nadu and another (1999 (1) SCC 417)** the Honourable Apex Court 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, there is absolutely no explanation for the delay of 5 days in considering the representation of the detenu. 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 order of detention passed by the second respondent, in detention order in No.13 of 2020 dated 10.02.2020, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely Ibram sha, S/o.Ismail, aged about 35 years, who is detained at Central Prison, Madurai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (C.O)

// 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.

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To

1. The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Fort. St. George, Chennai - 600 009.
2. The Joint Secretary to Government,
Public(Law and Order),
Fort St.George, Chennai-09.
3. The District Collector and District Magistrate,
Dindigul District.
4. The Superintendent of Central Prison,
Madurai, Madurai District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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