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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.09.2020
CORAM:
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI
H.C.P.(MD) No.195 of 2020

Manisankar ... Petitioner
[Amended as per order of this Court, dated 15.09.2020 in Crl.M.P.(MD) No.4455 of 2020]

-vs-

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

2.The District Collector and District Magistrate
District Collector and District Magistrate's Office
Thanjavur District

3.The Superintendent of Prison
Trichy Central Prison, Trichy District ... 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 connected with the detention order of the respondent No.2 in P.D.No.45/2019, dated 17.12.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Manisankar, son of Gurunathan, aged about 19 years, now detained as 'Goonda' at Trichy Central Prison, before this Court and set him at liberty forthwith.
[Amended as per order of this Court, dated 15.09.2020 in Crl.M.P.(MD) No.4455 of 2020]

For Petitioner : Mr.R.Alagumani

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 detenu, namely, Manisankar, son of Gurunathan, aged about 19 years, challenging the detention order in P.D.No.45/2019, dated 17.12.2019, passed by the second respondent, branding him as “Goonda” as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

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2. Mr.R.Alagumani, 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, on instructions, 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 02.03.2020 and it was received on 06.03.2020. Remarks were called for on the same day i.e. 06.03.2020 and it was received on 20.03.2020. The Deputy Secretary dealt with the matter on the same day i.e.20.03.2020. The concerned Minister dealt with the matter on 24.03.2020 and the representation came to be rejected on 26.03.2020. It is seen that in between 06.03.2020 and 20.03.2020, there was a delay of ten days, after excluding the Government Holidays of four 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 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 ten 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.

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8. In fine, the Habeas Corpus Petition is allowed. The detention order in P.D.No.45/2019, dated 17.12.2019, passed by the second respondent, is set aside. Consequently, the detenu, namely, Manisankar, son of Gurunathan, aged about 19 years, who is now detained at Trichy Central Prison, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CO)

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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 Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Chennai-600 009.

2.The Joint Secretary to Government
Public(law & order),
Fort St.George, Chennai-9

3.The District Collector and District Magistrate,
District Collector and District Magistrate's Office,
Thanjavur District.

4.The Superintendent of Prison,
Trichy Central Prison, Trichy District.

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

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