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H.C.P.(MD) No.206 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P.(MD) No.206 of 2020

Murugan

... Petitioner/Father of the detenu

-vs-

1.The State of Tamil Nadu,
represented by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009

2.The District Collector and the District Magistrate
Tirunelveli District
Tirunelveli.

3.The Superintendent of Prison
Central Prison
Palayamkottai,
Tirunelveli.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus calling for the entire records connected with the detention order passed in M.H.S.Confdl.No.11 of 2020, dated 17.2.2020, on the file of the second respondent and to quash the same and direct the respondents to produce the detenu or body of the detenu namely the Petitioner's son i.e., Suresh, aged about 18 years, Son of Murugan, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

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 father of the detenu, namely, Suresh, son of Murugan, aged about 18 years, challenging the detention order in M.H.S.Confdl.No.11/2020, dated 17.02.2020, 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. Heard Mr.N.Pragalathan, 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.

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3. Though several grounds have been raised to assail the impugned order of detention, it is mainly contended by the learned counsel for the Petitioner that the Detention Order is liable to be set aside on the sole ground of violation of procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India. It is submitted by the learned counsel for the Petitioner that the representation sent by the detenu was not considered by the authorities on time 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, 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, warranting interference by this Court. 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.

5. In the instant case, the pro-forma 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 06.03.2020 and it was received on 09.03.2020. Though the remarks were called for on the same day, it was received by the first respondent on 20.04.2020. The file was dealt with by the Under Secretary and Deputy Secretary on 24.4.2020 and 6.5.2020 respectively and by the concerned Minister on 6.5.2020 and the representation came to be rejected on 07.05.2020. It is relevant to note that in between 09.03.2020 and 20.04.2020, there was a delay of 42 days and after excluding the Government Holidays of 16 days, there is a delay of 26 days in considering the petitioner's representation. The delay referred to supra has not been properly explained by the respondents. It is settled law that the unexplained delay in considering the representation would vitiate the order of detention.

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 42 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 M.H.S.Confdl.No.11/2020, dated 17.02.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Suresh, son of Murugan, aged about 18 years, who is now detained at Central Prison, Palayamkottai is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsn

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,
Government of Tamil Nadu,
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009
- 2.The District Collector and the District Magistrate
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4. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai-9

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

ORDER MADE IN
H.C.P. (MD) No.206 of 2020
26.08.2020

VB (07.09.2020) 4P 6C