



WEB COPY

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.591 of 2020

Rengasamy ... Petitioner/Father of the detenu
-vs-

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

2.Office of the District Collector and District Magistrate,
Thiruchirappalli District,
Thiruchirappalli.

3.The Superintendent of Prison,
Central Prison,
Thiruchirappalli.

4.The Superintendent of Police,
Thiruchirappalli District,
Thiruchirappalli.

5.Inspector of Police,
Jambunathapuram,
Thiruchirappalli District,
Thiruchirappalli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in CrI.M.P.No.02 of 2020, dated 09.01.2020 in detaining the detenu under section 2(f) of the Tamilnadu Act 14 of 1982 as a 'Goonda' and quash the same and direct the respondents to produce the detenu namely Durairaj, S/o.Rengasamy, Male, aged about 26 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.



For Petitioner : Mr.K.Thenrajan
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

WEB COPY

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

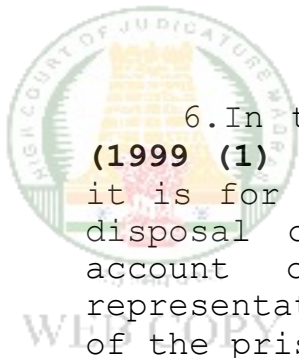
The father of the detenu namely Durairaj, S/o.Rengasamy, who has been detained under Act 14 of 1982 branding him as 'Sand Offender' has filed the present Habeas Corpus Petition to set aside the detention order passed by the second respondent in CrI.M.P.No.02 of 2020 dated 09.01.2020.

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 09.01.2020. Against the same, a representation dated 12.02.2020 was given and the same was received by the first respondent on 24.02.2020 and remarks were called for on 25.02.2020 and it was received on 28.05.2020. The Deputy Secretary dealt with the same on 28.05.2020 and by the concerned Minister on 03.06.2020 and it was rejected on 04.06.2020. It is seen that there was delay of 93 days in between 25.02.2020 and 28.05.2020. It is also seen that there are 32 Government holidays and after excluding the same, there is a delay of 61 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 any 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 61 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 Crl.M.P.No.02 of 2020 dated 09.01.2020, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Durairaj, S/o.Rengasamy, Male, aged about 26 years, who is detained in 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)

rj2

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,
Secretariat, Chennai - 600 009.

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



3.The Superintendent of Prison,
Central Prison,
Thiruchirappalli.

WEB COPY

4.The Superintendent of Police,
Thiruchirappalli District,
Thiruchirappalli.

5.The Inspector of Police,
Jambunathapuram,
Thiruchirappalli District,
Thiruchirappalli.

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

H.C.P. (MD) No.591 of 2020
25.09.2020

AL (CO)
AP (07/10/2020) 4P 7C