



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2020

CORAM:

WEB COPY

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

H.C.P. (MD) No.360 of 2020

M.Esakki

... Petitioner

-vs-

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

2.The District Collector and 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, to issue a writ of habeas corpus calling for the entire records connected with the detention order passed in M.H.S.Confdl No.28/2020 dated 27.05.2020 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son i.e., Periyasamy, aged about 20 years S/o Esakki, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

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

The Habeas Corpus Petition has been filed by the father of the detenu, namely, Periyasamy, son of Esakki, Male aged about 20 years,
<https://hcservices.ecourts.gov.in/hcservices/>



who has been branded as "Goonda" by the second respondent in M.H.S.Confdl No.28/2020 dated 27.05.2020, as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2.Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 27.05.2020 Mr.N.Pragalathan, learned counsel for the petitioner would contend that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India has been violated and there is an inordinate and unexplained delay in considering the representation of the detenu and on this sole ground, the detention order is liable to be set aside.

3.Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the order of detention passed by the second respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

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

5.The *pro forma* furnished by the learned Additional Public Prosecutor would show that aggrieved over the order of detention, on behalf of the detenu, a representation dated 15.06.2020 was sent to the detaining authority, the second respondent herein, which was received on 22.06.2020. The detaining authority called for remarks from the sponsoring authority and the same was received on 25.06.2020. However, after lapse of 11 days, remarks were sent to the Government and the same was received by the Government on 21.07.2020. The file was submitted on 22.07.2020 and the Deputy Secretary placed the file before the concerned Minister on 24.07.2020. Rejection letter was prepared on 27.07.2020 and it was sent to the detenu on 28.07.2020. It is seen that there was delay of 11 days between 25.06.2020 and 07.07.2020. It is also seen that there are 4 Government holidays and after excluding the same, there is a delay of 7 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 7 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 M.H.S.Confdl No.28/2020 dated 27.05.2020 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Periyasamy, son of Esakki, Male aged about 20 years,, 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)

skn

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 of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
- 3.The Superintendent of Central Prison,
Palayamkottai, Tirunelveli.



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.

H.C.P. (MD) No.360 of 2020
20.11.2020

VB (22.12.2020) 4P 6C