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H.C.P(MD) No.370 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.370 of 2020

M.Elakkiya

... Petitioner/Wife of the detenu

-vs-

1.The Principal Secretary to Government,
Home Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

2.The District Collector and District Magistrate,
Theni District.

3.The Superintendent,
Central Prison, Madurai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records of the 2nd respondent in detention order No.7/2020, dated 11.03.2020, quash the same and consequently direct the respondents to produce petitioner's husband / detenu namely Kamatchi, S/o.Kamaraj, aged 35 years, who is now detained in Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.S.Ramasamy
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

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

The wife of the detenu namely Kamatchi, S/o.Kamaraj, 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 dated 11.03.2020 in D.O.No.07 of 2020.

2.Though the detention order impugned in the Habeas Corpus Petition is assailed on several grounds, the learned counsel for the

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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.

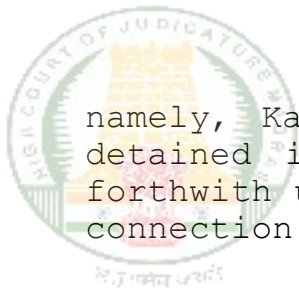
4.We have heard the rival submissions and perused the materials available on records.

5.In the present case, the detenu was detained by the order of the second respondent, dated 11.03.2020. Against the same, a representation dated 07.05.2020 was given and the same was received by the first respondent on 10.06.2020 and remarks were called for on 10.06.2020 and it was received on 21.07.2020. The Deputy Secretary dealt with the same on 22.07.2020 and by the concerned Minister on 24.07.2020 and it was rejected on 27.07.2020. It is seen that there was delay of 41 days between 10.06.2020 and 21.07.2020. It is also seen that there are 12 Government holidays and after excluding the same, there is a delay of 29 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 29 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 D.O.No.07 of 2020, dated 11.03.2020, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu,



namely, Kamatchi, S/o.Kamaraj, male, aged about 35 years, who is detained in Central Prison, Madurai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

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Sd/-

Assistant Registrar (Records)

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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,
Home Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Theni District.
- 3.The Superintendent,
Central Prison, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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