



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.10.2020

CORAM:

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

H.C.P. (MD) No.436 of 2020

P.Sumathi ... Petitioner/Mother 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 District Magistrate,
Kauru District,
Karur.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli. ... 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 passed in Cr.M.P.No.11 of 2020, dated 24.6.2020 on the file of the second respondent herein and to quash the same and to direct the respondents to produce the detenu or body of the detenu namely, the Petitioner's son i.e., Kathiresan, aged about 19 years, son of Panaiyadian, now detained at Central Prison, Tiruchirappalli before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents: Mr.R.Anandharaj
Additional Public Prosecutor



O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

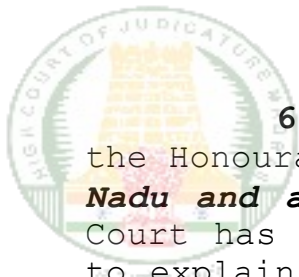
The detenu namely, kathiresan, son of Panaiyadian has been detained by the order of the second respondent, dated 24.06.2020 in Cr.M.P.No.11 of 2020, wherein, he has been branded as Goonda as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2.The Petitioner is the mother of the detenu. Mr.N.Pragalathan,the learned counsel for the Petitioner would submit that the detention Order impugned in this Habeas Corpus Petition is liable to be set aside on two grounds. Firstly, on the ground of violation of procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India . Secondly, on the ground of failure on the part of the Detaining Authority to intimate the order of Detention to his family members or to his relatives.

3.Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondents would argue that the second respondent/Detaining Authority having satisfied with the cogent and relevant materials furnished by the sponsoring authority, has rightly passed the Detention Order against the detenu, after taking note of his antecedents and only to prevent him from doing similar acts in future. It is contended by the learned Additional Public Prosecutor that the order of detention has been properly intimated and there is no delay in considering the representation of the detenu and prayed for dismissal of the Habeas Corpus Petition.

4.A perusal of the Arrest Intimation Memo annexed at Page No.62 of the booklet would reveal that the order of detention has been intimated to Cousin of the detenu Balasubramanian through SMS to the Cell Phone Number 9843864313. There is nothing on record to show that the said Cell Phone Number belongs to the said Balasubramanian and the text of the arrest intimation is also not annexed along with the booklet.

5. Further, in the instant case, the pro-forma furnished by the learned Additional Public Prosecutor would state that aggrieved over the impugned Detention Order, dated 24.6.2020, a representation was made to the first respondent on 1.7.2020 and it was received on 21.7.2020. Remarks were called for on the same day i.e, on 21.7.2020 and it was received on 20.08.2020 and after circulation of the file to the Under Secretary, the Deputy Secretary and the concerned Minister, vitrually, the representation was rejected on 4.9.2020. It is relevant to note that in between 21.7.2020 and 20.08.2020, there was a delay of 30 days and after excluding 11 government Holidays, there was a delay of 19 days in considering the representation of the Petitioner, which remains unexplained by the respondents.



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 19 days in considering the representation of the petitioner remains unexplained by the respondents. Hence, considering the above aspects, We are of the opinion that the Detention Order impugned in the present Habeas Corpus Petition is liable to be set aside.

8. In fine, the Habeas Corpus Petition is allowed. The detention order in Cr.M.P.No.11 of 2020, dated 24.06.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Kathiresan, son of Panaiyadian, aged about 19 years, who is now detained at 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 (CO)

// 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.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George,
Chennai-9.

3.The District Collector and District Magistrate,
Kauru District,
Karur.

4.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

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

ORDER MADE IN

H.C.P. (MD) No.436 of 2020

15.10.2020

NR (06/11/2020) 4P : 6C