



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2020

CORAM:

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

H.C.P. (MD) Nos.531 & 615 of 2020

R.Jayaprasanna ... Petitioner in both H.C.Ps.

-vs-

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

2.The District Collector and District Magistrate
Thanjavur District

3.The Superintendent
Central Prison, Trichirappalli

... Respondents in both H.C.Ps.

PRAYER (in H.C.P. (MD) No.531 of 2020) : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus calling for the records relating to impugned order of the detention dated 19.07.2020 in P.D.No.21/2020 passed by the second respondent herein and quash the same and consequently direct the respondents to set forth the detainee Mr.T.Prabhakaran, son of Thamilarasan, aged about 28 years, now confined in Central Prison, Trichirappalli and set him at liberty.

PRAYER (in H.C.P. (MD) No.615 of 2020) : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus calling for the records relating to impugned order of the detention dated 19.07.2020 in P.D.No.20/2020 passed by the second respondent herein and quash the same and consequently direct the respondents to set forth the detainee Mr.C.Thamilarasan, son of Chandrasekaran, aged about 66 years, now confined in Central Prison, Trichirappalli and set him at liberty.



For Petitioner : Mr.A.Selvendran
(in both H.C.Ps.)

For Respondents : Mr.K.Dinesh Babu
(in both H.C.Ps.) Additional Public Prosecutor

C O M M O N O R D E R

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

The habeas corpus petition in H.C.P.(MD) No.531 of 2020 has been filed by the wife of the of the detenu, namely, Mr.T.Prabhakaran, son of Thamilarasan, aged about 28 years, challenging the detention order in P.D.No.21/2020, dated 19.07.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Similarly, the habeas corpus petition in H.C.P.(MD) No.615 of 2020 has been filed by the daughter-in-law of the of the detenu, namely, Mr.C.Thamilarasan, son of Chandrasekaran, aged about 66 years, challenging the detention order in P.D.No.20/2020, dated 19.07.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982

3. Mr.A.Selvendran, learned counsel for the petitioner, would argue that even though the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representations. It is submitted by the learned counsel for the petitioner that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India have not been followed in this case and there is unexplained and inordinate delay in disposal of the petitioner's representations, which would vitiate the impugned orders of detention.

4. The learned counsel for the petitioner would further submit that the detenues have been falsely implicated in the criminal cases, which were registered for the offence under Sections 406, 420, 120(b), 294(b), 352, 355 and 506(ii) I.P.C. and the allegations against the detenues are that they acted as mediators and received Rs.67,50,000/- from the purchaser, but failed to handover the same to the owner of the land. It is also contended that despite lodging criminal complaint, the *de facto* complainant in the adverse case also filed a private complaint under Section 138 N.I.Act and instituted a suit before the learned Principal District Judge, Chengelpet, in O.S.No.187 of 2020 for recovery of Rs.71,55,000/-. It is the submission of the learned counsel that without prejudice to their right, the detenues are ready to deposit rupees five lakhs each to the credit of the suit. In this regard, an affidavit dated 16.12.2020 has been filed by the petitioner.



5. Mr.K.Dinesh Babu, learned Additional Public Prosecutor, while reiterating the counter filed by the second respondent, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention orders and there is no illegality or infirmity in the detention orders. It is also stated that even if there is any delay in disposal of the representations, it has not caused any prejudice to the rights of the detainees and hence, prayed for dismissal of the habeas corpus petitions.

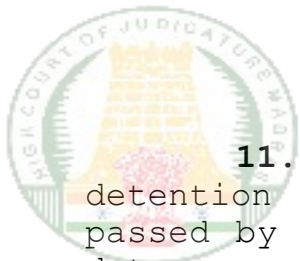
6. Heard both sides and perused the materials available on record.

7. With regard to the suit filed by the *de facto* complainant for recovery of money is concerned, the petitioner has filed an undertaking, dated 16.12.2020, to the effect that the detainees, without prejudice to their rights, are ready to deposit Rs.5,00,000/- each (totally Rs.10,00,000/-) to the credit of the suit in O.S.No.187 of 2020, pending on the file of the Principal District Court, Chengelpet, within a period of four weeks from the date of their release. The said undertaking filed by the petitioner is taken on record.

8. Further, in the instant case, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention orders, the petitioner made representations to the first respondent on 27.07.2020 and they were received on 06.08.2020. Remarks were called for on 07.08.2020 and it was received on 17.09.2020. The Deputy Secretary dealt with the matter on the same day i.e.17.09.2020. The concerned Minister dealt with the matter on 04.11.2020 and the representations came to be rejected on 06.11.2020. It is seen that in between 17.09.2020 and 04.11.2020, there was a delay of 37 days, after excluding the Government Holidays of 10 days, in considering the petitioner's representations.

9. 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.

10. In the case on hand, as stated supra, the delay of 37 days in considering the representations of the petitioner have not been properly explained by the respondents. Hence, in our considered view, the detention orders are liable to be set aside.



11. In fine, the Habeas Corpus Petitions are allowed. The detention orders in P.D.Nos.20 and 21 of 2020, dated 19.07.2020, passed by the second respondent, are set aside. Consequently, the detenus, namely, Mr.T.Prabhakaran, son of Thamilarasan, aged about 28 years (in H.C.P.(MD) No.531 of 2020) and Mr.C.Thamilarasan, son of Chandrasekaran, aged about 66 years (in H.C.P.(MD) No.615 of 2020), who are now detained at Central Prison, Trichirappalli, are directed to be released forthwith unless their presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

krk

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 (XVI) Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Thanjavur District.
- 3.The Superintendent,
Central Prison, Trichirappalli.
4. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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KUN(CO)
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