



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1105 of 2019

Jerin

... Petitioner/Detenu

-vs-

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
 - 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
 - 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- ... 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 of the Respondent No.2 in M.H.S.Confdl No.75/2019 dated 03.10.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Jerin son of Jeyakumar aged about 22 years, now detained as "Goonda" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

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

The present Habeas Corpus Petition has been filed to assail the detention order passed by the second respondent in M.H.S.Confdl No.75/2019 dated 03.10.2019, wherein the petitioner, namely, Jerin S/o Jeyakumar aged about 22 years has been detained as 'Goonda' as contemplated under Section 2(f) of the Tamil Nadu



2.Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 03.10.2019, Mr.R.Alagumani, learned counsel for the petitioner would mainly contend that the procedural safeguards guaranteed under Article 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 petitioner and on this sole ground, the detention order is liable to be set aside.

3.Per contra, Mr.V.Neelakandan, 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. 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.In the matter on hand, the petitioner has been detained by the order of the second respondent dated 03.10.2019. It is seen that a representation dated 15.11.2019 has been sent to the respondents and the same was received on 29.11.2019 and on the same day, remarks were called for and the same were received on 13.12.2019. The Deputy Secretary dealt with the matter on 16.12.2019. The concerned Minister dealt with the matter on 07.01.2020 and thereafter, the petitioner's representation was rejected on 08.01.2020.

6.It is seen that there was delay of 21 days between 16.12.2019 and 07.01.2020. It is also seen that there are 8 Government holidays and after excluding the same, there is a delay of 13 days in considering the representation of the detenu. It is the contention of the petitioner that the delay of 13 days in considering the representation of the detenu was not properly explained. It is well settled that if the delay is not explained, the right guaranteed under the Constitution of India has been violated.

7. 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 it is held



adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

8. In the case on hand, there is absolutely no explanation for the delay between 16.12.2019 and 07.01.2020. Even after excluding 8 Government holidays, there is unexplained delay of 13 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.

9. In fine, the order of detention passed by the second respondent, in M.H.S.Confdl No.75/2019 dated 03.10.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Jerin son of Jeyakumar aged about 22 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 (RECORDS)

// 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,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

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

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

4.The Joint Secretary to Government,
Public(Law and Order)
Fort.St.George, Chennai-600 009.

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

H.C.P. (MD) No.1105 of 2019

23.07.2020

KM (31.07.2020) 5P 6C