



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2020

CORAM:

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

H.C.P. (MD) No.1134 of 2019

Chellammal

... Petitioner

-VS-

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

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

3.The Superintendent of Prison
Palayamkottai Central Prison
Tirunelveli District

... 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 of the respondent No.2 in H.S.(M) Confdl.No.64/19, dated 15.10.2019 and quash the same and direct the respondents to produce the detenu by name Kaliappan, son of Velusamy, aged about 25 years, now detained in Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

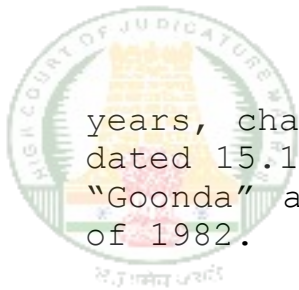
For Petitioner : Mr.R.Vinoth Bharathi

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

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

This habeas corpus petition has been filed by the mother of the detenu, namely, Kaliappan, son of Velusamy, aged about 25



years, challenging the detention order in H.S.(M) Confdl.No.64/19, dated 15.10.2019, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Mr.R.Vinoth Bharathi, 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 representation. 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 representation, which would vitiate the impugned order of detention.

3. Mr.V.Neelakandan, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. It is also stated that even if there is any delay in disposal of the representation, it has not caused any prejudice to the rights of the detenu and hence, prayed for dismissal of the habeas corpus petition.

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

5. In the instant case, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 16.11.2019 and it was received on 22.11.2019. Remarks were called for on the same day i.e.22.11.2019 and it was received on 27.11.2019. The Deputy Secretary dealt with the matter on 28.11.2019. The concerned Minister dealt with the matter on 14.12.2019 and the representation came to be rejected on 16.12.2019. It is seen that in between 28.11.2019 and 14.12.2019, there was a delay of twelve days, after excluding the Government Holidays of four days, in considering the petitioner's representation.

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



delay will adversely affect further detention of the prisoner.

7. In the case on hand, as stated supra, the delay of twelve days in considering the representation of the petitioner has not been properly explained by the respondents. 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 Habeas Corpus Petition is allowed. The detention order in H.S.(M) Confdl.No.64/19, dated 15.10.2019, passed by the second respondent, is set aside. Consequently, the detenu, namely, Kaliappan, son of Velusamy, aged about 25 years, who is now detained at Palayamkottai Central Prison 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)

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,
State of Tamilnadu,
Fort St.George, Chennai-600 009.
- 2.The District Collector and The District Magistrate,
Thoothukudi District, Thoothukudi.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.



H.C.P.(MD) No.1134 of 2019

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.

H.C.P. (MD) No.1134 of 2019
17.09.2020

sr(CO)

TR(28.09.2020) 4P 6C