



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.1274 of 2019

Thanushkodi @ Thanush

...Petitioner/Detenu

-vs-

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
O/o District Collector and District Magistrate,
Madurai.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai 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 B.C.D.F.G.I.S.S.S.V.No.37/2019 dated 21.11.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name, Thanushkodi @ Thanush, son of Thangam aged about 37 years now confining as "Goonda" at Madurai 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 prayer in the Habeas Corpus Petition is to quash the detention order passed by the second respondent dated 21.11.2019 in B.C.D.F.G.I.S.S.S.V.No.37/2019, wherein the petitioner has been branded as 'Goonda' as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2.Though several grounds have been raised to assail the impugned order of detention passed by the second respondent, dated
<https://hcservices.ecourts.gov.in/hcservices/>



21.11.2019, Mr.R.Alagumani, learned counsel for the petitioner would contend that the impugned order is liable to be quashed on the sole ground of delay in considering the representation of the petitioner.

3.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents would submit that the detaining authority, namely, the second respondent herein, after being satisfied with the materials placed by the sponsoring authority, has passed the detention order only to prevent the petitioner 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 21.11.2019. It is seen that a representation dated 26.11.2019 was sent to the respondents and the same was received on 02.12.2019. Remarks were called for on the same day. But it was received only on 27.12.2019. The Deputy Secretary dealt with the matter on 30.12.2019. The concerned Minister dealt with the matter on 07.01.2020 and thereafter, the petitioner's representation was rejected on 07.01.2020.

6.It is seen that there was delay of 25 days between 02.12.2019 and 27.12.2019 in considering the representation of the petitioner. It is also seen that there are 7 Government holidays and after excluding the same, there is a delay of 18 days in considering the representation of the petitioner, which has not been 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 as follows:

"7. It is a Constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the consideration for the decision to be taken on the representation, the words 'as soon as may be' in Clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is preempted from explaining the

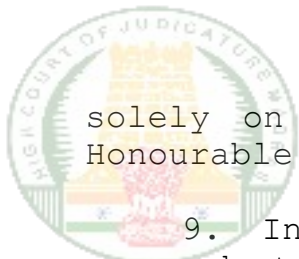


delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable caused. This position has been well delineated by a Constitution Bench of this Court in *M.M.Abdulla Kunhi v. Union of India*, 1991 (1) SCC (Cri) 613. The following observations of the Bench can profitably be extracted here: (SCC 484, Para 12)

"It is a Constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in Clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and dispose of with a sense of urgency without any avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the Detention Law concerned within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the Constitutional imperative and it would render the continued detention impermissible and illegal."

8. The position, therefore, now is that if delay was caused on account of nay indifference or lapse in considering the representation, such delay will 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 05.11.2019 and 23.12.2019. Even after excluding 7 Government holidays, there is unexplained delay of 18 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 B.C.D.F.G.I.S.S.V.No.37/2019 dated 21.11.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Thanushkodi @ Thanush, son of Thangam aged about 37 years now detained at Madurai 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 (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,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
O/o District Collector and District Magistrate,
Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Joint Secretary to Government of Tamil Nadu Public (L&O),
Fort Saint George, Chennai -9.
- 5.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1274 of 2019
23.07.2020

KB(30.07.2020) 4P 6C