



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2020

CORAM:

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

H.C.P. (MD) No.1351 of 2019

Manimegalai ... Petitioner/Wife of the detenu

-vs-

- 1.The State of Tamil Nadu, represented by
The Additional Chief Secretary to Government
Home, Prohibition and Excise(XVI) Department
Fort St.George, Chennai-9
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Pudukkottai District,
Pudukkottai.
- 3.The Superintendent,
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 in Detention Order passed in P.D.O.No.88 of 2019, dated 1.12.2019 on the file of the second respondent and to set aside the same as illegal and direct the respondents to produce the body or person of the Petitioner's husband namely Sivakumar, son of Karuppaiah, male, aged about 43 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.G.Arunkumar

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 wife of the detenu, namely, Sivakumar, son of Karuppaiah, aged about 43 years, challenging the detention order in P.D.O.No.88 of 2019, dated 01.12.2019, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

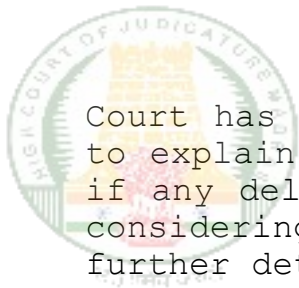
2. Mr.K.G.Arunkumar, learned counsel for the petitioner, would argue that even though the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representation. It is submitted by the learned counsel for the petitioner that the procedural 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, on instructions, 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 pro-forma 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 17.12.2019 and it was received on 19.12.2019. Remarks were called for on the same day i.e. 19.12.2019 and it was received on 20.01.2020. The Deputy Secretary dealt with the matter on 21.01.2020. The concerned Minister dealt with the matter on 22.01.2020 and the representation came to be rejected on 23.01.2020. It is seen that in between 19.12.2019 and 20.01.2020, there was a delay of 31 days, after excluding the Government Holidays of 15 days, there is a delay of 16 days in considering the petitioner's representation, remains unexplained.

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.

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7. In the case on hand, as stated supra, the delay of 31 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 P.D.O.No.88/2019, dated 01.12.2019, passed by the second respondent, is set aside. Consequently, the detenu, namely, Sivakumar, son of Karuppaiah, aged about 43 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 (CS-II)

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/ /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.

To:

- 1.The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise(XVI) Department
Fort St.George, Chennai-9
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Pudukkottai District,
Pudukkottai.

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



3.The Superintendent,
Central Prison,
Tiruchirappalli.

4.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George, Chennai.

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

ORDER MADE IN
H.C.P. (MD) No.1351 of 2019
07.09.2020

vsn
SDS (18.09.2020) 4P-6C