



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12 .08.2021

CORAM:

**THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
H.C.P.(MD) No.15 of 2021**

Lakshmi

... Petitioner

vs.

1.The Additional Chief Secretary to
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
For.St.George,
Chennai-600 009.

2.The District Collector cum District Magistrate,
Dindigul,
Dindigul District.

3.The Superintendent of Prison,
Central Prison,
Madurai, Madurai 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 records pertaining to the Detention Order No.80/Goonda/2020, dated 28.11.2020 passed by the second respondent and set-aside the same by setting the detinue by namely Vignu @ Vignesh, S/o. Irulappan aged about 26 years at liberty, now detained at Central Prison, Madurai.

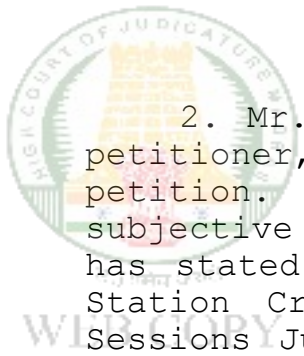
For Petitioner : Mr.J. William Christopher

For Respondents : Mr.S.Ravi
Standing Counsel for Government

O R D E R

(Order of the Court was made by J.NISHA BANU, J.)

This habeas corpus petition has been filed by the mother of the detinue, namely, Vignu @ Vignesh, S/o.Irulappan, aged about 26 years, against the detention order passed by the second respondent, in No.80/Goonda/2020, dated 28.11.2020, branding him as 'Goonda' as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.

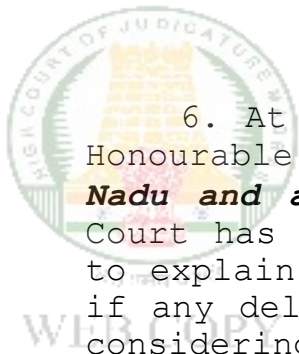


2. Mr.J.Willaim Christopher, learned counsel appearing for the petitioner, would submit that the detenu has not filed any bail petition. However, the Detaining Authority, to arrive at the subjective satisfaction, in Paragraph No.5 of the detention order, has stated that in a similar case registered in Varusanadu Police Station Crime No.55 of 2016, bail was granted by the Vacation Sessions Judge, Theni, vide order dated 25.05.2016 in Cr.M.P.No.46 of 2016, to one Selvam and therefore, there is a likelihood of the detenu in coming out on bail in the ground case. It is the submission of the learned counsel that when no bail petition has been filed by the detenu in the ground case, the subjective satisfaction reached by the Detaining Authority is without any basis and there is no imminent possibility of the detenu coming out on bail by filing bail petition before the appropriate Court in the ground case. In addition to that, the Sponsoring Authority has not furnished the material documents before the Detaining Authority. Even though the learned counsel for 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.S.Ravi, learned Standing counsel appearing for the respondents, 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 the learned counsel appearing on either side and perused the materials available on record.

5. In the instant case, the proforma furnished by the learned Standing counsel would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 04.12.2020 and it was received on 12.01.2021. Remarks were called for on the same day i.e., 12.01.2021 and it was received on 21.01.2021. The Deputy Secretary dealt with the matter on 22.01.2021. The concerned Minister dealt with the matter on 04.02.2021 and the representation came to be rejected on 04.02.2021. It is seen that in between 12.01.2021 and 21.01.2021 and in between 22.01.2021 and 04.02.2021, there was a delay of 7 days, after excluding the Government Holidays of 12 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 any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

7. In the case on hand, as stated supra, the delay of 7 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 made in No.80/Goonda/2020, dated 28.11.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Vignu @ Vignesh, S/o.Irulappan, aged about 26 years, who is now detained at Central Prison, Madurai, 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-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

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

2.The District Collector cum District Magistrate,
Dindigul,
Dindigul District.

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



3.The Superintendent of Prison,
Central Prison,
Madurai, Madurai District.

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

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

+1 CC to M/s.J.WILLIAMCHRISTOPHER, Advocate (SR-26110[F] dated
12/08/2021)

H.C.P. (MD) No.15 of 2021
12.08.2021

RD(27.08.2021) 4P 7C