



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.08.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.52 of 2021

Vahith @ Abdul Vahith

... Petitioner/ Detenu

-vs-

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
 - 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.
 3. The Superintendent of Prison,
Madurai Central Prison,
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 entire records, connected with the detention order of the Respondent No.2 in Detention Order No.95 of 2020 dated 28.12.2020 and quash the same and direct the Respondents to produce the body or person of the detenu by name Vahith @ Abdul Vahith, son of Mohamed Ali, aged about 22 years, now detained as "Goonda" at Madurai Central Prison before this Hon'ble Court and set him at liberty forthwith.

For Petitioner :Mr.R.Alagumani

For Respondents :Mr.S.Ravi
Standing counsel for the State



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 detenu, namely, Vahith @ Abdul Vahith, S/o.Mohammed Ali, aged about 22 years, challenging the detention order No.95/2020 dated 28.12.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2.The learned counsel for the petitioner assails the order of detention on the following grounds:-

(i) The detaining authority mechanically arrived the subjective satisfaction relating to the possibility of the detenu for coming out on bail in the ground case; (ii) There is an inordinate delay in passing the detention order; (iii) The detaining authority pre-judged the future activities of the detenu that if he comes out on bail, the detenu will indulge in such future activities, which will be prejudicial to the maintenance of public order. But there is no corresponding cogent materials in the booklet relating to the said statement in the booklet; (iv) Several pages in the booklet are in English and therefore, the detenu was not able to understand and make effective representation; (vi) The booklets are illegible and therefore, the detenu cannot understand the said pages and prefer effective representation and ; The Tamil and English version of the grounds of detention and booklet differs and therefore, the detenu was not able to effectively represent the case before the advisory board.

3.Even though the petitioner has raised the above grounds to quash the impugned detention order, the learned counsel for the petitioner would mainly place arguments on the ground of delay in disposal of the petitioner's representation. In this regard, the learned counsel for the petitioner would state 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. Thus, he would pray to quash the impugned order of detention.

4.The learned Standing Counsel appearing for the respondents would state that after satisfying with the materials placed by the sponsoring authority, the detaining authority has passed the impugned detention order and therefore, there is no infirmity or illegality in the same. He would produce the proforma regarding the disposal of the petitioner's representation and would state that even if there is any delay in disposal of the petitioner's representation, it has not caused any prejudice to the rights of the detenu. Thus, he would pray for dismissal of this petition.



5.Heard the learned counsel for the petitioner as well as the respondents.

6.Perusal of the proforma produced by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner has made a representation to the 1st respondent on 04.01.2021 which was received on 05.02.2021. Remarks on the said representation were called for on 05.02.2021 and it was received on 10.02.2021. The Deputy Secretary concerned has dealt with the representation on 10.02.2021 and the Hon'ble Minister concerned has dealt with the representation on 12.04.2021 and finally, the representation came to be rejected on 15.04.2021. It is seen that in between 10.02.2021 and 12.04.2021, there is a delay of 60 days. After excluding the Government holidays of 19 days, there is a delay of 41 days in considering the petitioner's consideration.

7.At this juncture, it is useful to refer to the decision of the Hon'ble Supreme Court in the case of **Rajammal vs. State of Tamil Nadu and another** reported in **1999 (1) CC 417**, wherein, the Apex Court has held that it is for the authority concerned to explain the delay, if any, in disposal of the representation of the detenu 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.

8.In the case on hand, as stated supra, the delay of 41 days in considering the representation of the petitioner remains unexplained by the respondents. Hence, in our considered view, the impugned detention order is liable to be set aside solely on the ground of delay by following the above decision of the Apex Court.

9.In fine, the Habeas Corpus Petition is allowed. The detention order No. 95 of 2020 dated 28.12.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Vahith @ Abdul Vahith, S/o.Mohammed Ali, aged about 22 years, who is now detained at Madurai Central Prison, Madurai, is directed to be released forthwith, unless his presence or custody or detention is required in connection with any other case.

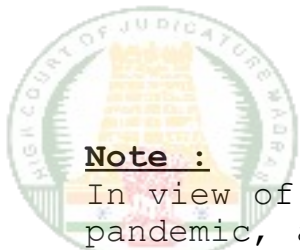
Sd/-

Assistant Registrar (CS III)

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/ /2021

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,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort St. George,
Chennai - 600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P.(MD) No.52 of 2021

DATED : 16.08.2021

MGJ(07.09.2021) 4P 6C