



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :28.09.2021

CORAM:

**THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
H.C.P. (MD) No.193 of 2021**

Vinothkumar

... Petitioner/ detenue

-Vs-

1. The Additional Chief Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Exercise Department,
Fort St.George, Secretariat,
Chennai-600 009.
 2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District..
 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.01/2021 dated 06.01.2021 and quash the same and direct the respondents to produce the body or person of the detenu by name Vinothkumar, S/o. Thiruppathi, aged about 24 years, now detained as "Goonda" Madurai Central Prison before this court and set him at liberty.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.S.Ravi
Additional Public Prosecutor

O R D E R

(Order of the Court was made by V. BHARATHIDASAN, J.)

This Habeas Corpus Petition has been filed by the father of the detenu, namely, Vinothkumar, S/o. Thiruppathi, aged about 24 years, challenging the detention order in No.01/2021 dated 06.01.2021, issued by the second respondent, branding him as



"Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

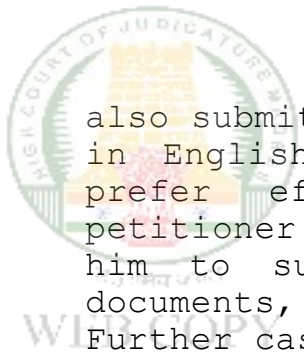
2. The learned counsel for the petitioner submits that the detaining authority mentioned in paragraph No.5 of the detention order that there is real possibility of the detenu coming out on bail by filing bail petition before the same or higher court. According to him, there is no necessity to file further bail application before the higher court since already bail petition filed by the detenu in the ground case was pending before the Judicial Magistrate, Oddanchatram, which would clearly reflect the non-application of mind on the part of the detaining authority.

3. Further contentions of the learned counsel for the petitioner are that the second respondent failed to report the fact of detention of the detenu with grounds and booklet to the first respondent forthwith, but with delay, which is violation of Section 3(3) of Act No.14 of 1982 and on 25.01.2021, the detenu sent representation to the first respondent requesting him to give information regarding the date of placing of all documents before the first respondent and the date of receiving the document by the first respondent for enabling the detenu about the compliance of mandatory requirement under section 3(3) of Act 14 of 1982, but, the same was not considered expeditiously.

4. The learned counsel for the petitioner, while projecting the delay on the part of the first respondent, has drawn the attention of this Court to Section 10 of the TamilNadu Act No.14 of 1982, which reads as that the first respondent shall place all relevant documents relating to the detention order before the Advisory Board within three weeks from the date of detention. According to the learned counsel for the petitioner, there is no cogent material reveals that on which date the first respondent placed all documents relating to the detention before the Advisory Board and on which date the Advisory Board received the same and therefore, without the said particulars, it could not be said that the mandatory provisions are followed by the authorities.

5. The learned counsel would vehemently contend that the detenu was arrested on 14.12.2020, the detaining authority passed detention order against the detenu with 23 days delay i.e on 06.01.2021 and the reason for the delay has not been explained by the detaining authority in the grounds of detention and booklet.

6. While pinpointing the prejudging attitude of the detaining authority, the learned counsel submits that it is mentioned in paragraph number 5 that if he comes out on bail, he will indulge in such future activities and there are no corresponding cogent materials in the booklet relating to the said statement. He would



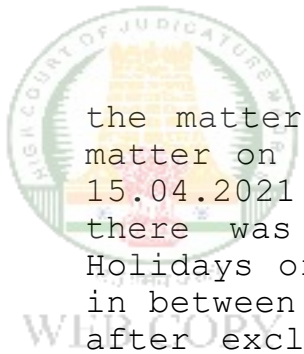
also submit that the several pages in the booklet are illegible and in English and therefore, the detenu could not understand and prefer effective representation. Though on 25.01.2021 the petitioner sent representation to the first respondent requesting him to supply the legible and completed copies of the said documents, but the same was also not considered expeditiously. Further case of the petitioner is that place of detention order was not intimated properly to the detenu's relatives and there is no cogent materials relating to the communication of the arrest and place of the detention to the family members of the detenu. The sponsoring authority failed to follow the principles laid down by the Hon'ble Supreme Court in **D.K.Basub-vs-State of West Bengal and A.K.Roy** Cases while arresting and detaining the detenu. The learned counsel also submits that there are no cogent materials to arrive at the subjective satisfaction and there is also no material to show that the activities of the detenu is prejudicial to the maintenance of public law and order to brand him as goonda.

7.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.

8.The learned Additional Public Prosecutor 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.

9.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondents.

10.Perusal of the proforma furnished by the learned Additional Public Prosecutor appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent dated 25.01.2021 and it was received on 29.01.2021. Remarks were called for on 29.01.2021 and it was received on 05.02.2021. The Deputy Secretary dealt with



the matter on 08.02.2021. The concerned Minister dealt with the matter on 12.04.2021 and the representation came to be rejected on 15.04.2021. It is seen that in between 29.01.2021 and 05.02.2021, there was a delay of 6 days, after excluding the Government Holidays of 2 days, there was a delay of 4 days in the I part and in between 08.02.2021 and 12.04.2021, there was a delay of 62 days, after excluding the Government Holidays of 19 days, there was a delay of 43 days in the II Part and totally there was a delay of 47 days in considering the petitioner's representation.

11. 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.

12. In the case on hand, as stated supra, the delay of 47 days in considering the representation of the petitioner remains unexplained 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 above decision of the Apex Court.

13. In fine, the Habeas Corpus Petition is allowed. The detention order in No.01/2021 dated 06.01.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Vinothkumar, S/o. Thiruppathi, aged about 24 years, who is now detained at Central Prison, Palayamkottai 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 //

/ /2021

Sub Assistant Registrar (CS)

CM

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

H.C.P. (MD) No.193 of 2021
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RS(26.11.2021) 5P 6C