



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :14.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.177 of 2021

WEB COPY

Sivakumar @ Kocha Bai

... Petitioner/detenu

-vs-

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise 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, or any other writ or direction calling for the entire records, connected with the detention order of the Respondent No.2 in Detention Order No.98/2020 dated 30.12.2020 and quash the same and direct the Respondents to produce the body or person of the detenu by name Sivakumar @ Kocha Bai, son of Kasinathan, aged about 21 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

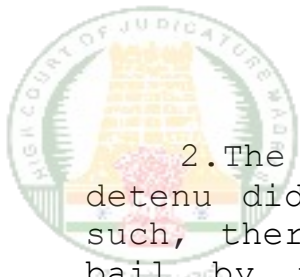
For Respondents : Mr.A.Thiruvadi kumar

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, Sivakumar @ Kocha Bai, S/o.Kasinathan, aged about 21 years, challenging the detention order in Detention Order No.98/2020 dated 30.12.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of

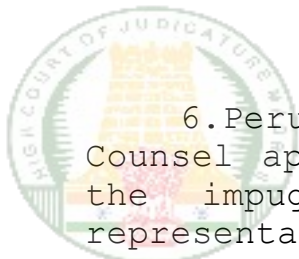


2.The learned counsel for the petitioner would state that the detenu did not file any bail application in the ground case, as such, there is no imminent or real possibility of coming out on bail by the detenu, whereas, stating that there is a real possibility of coming out on bail by the detenu, the impugned detention order has been passed which reflects non-application of mind on the part of the detaining authority. He would further state that Tamil and English version of the grounds of detention and booklet differs and several pages in the booklet are in English and the detenu also requested for the translated version of the copies, but the same was not considered. It is further stated that several pages in the typed set of grounds furnished to the detenu, the copies are not legible and readable which caused serious prejudice to the detenu from making effective representation to the higher authorities. It is also stated that the detention order was not intimated to the family members of the detenu, which is in violation of the principles laid down by the Honourable Apex Court in D.K.Basu vs. State of West Bengal and A.K.Roy cases and there is 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 and further, there is a delay in considering the representation.

3.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.

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

5. 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.



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 25.01.2021 which was received on 29.01.2021. Remarks on the said representation were called for on 29.01.2021 and it was received on 05.02.2021. The Deputy Secretary concerned has dealt with the representation on 08.02.2021 and the Hon'ble Minister concerned has dealt with the representation on 26.02.2021 and finally, the representation came to be rejected on 27.02.2021. It is seen that in between 08.02.2021 and 26.02.2021, there is a delay of 17 days. After excluding the government holidays of 4 days, there is a delay of 13 days in considering the petitioner's representation.

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 13 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 in Detention Order No.98/2020 dated 30.12.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Sivakumar @ Kocha Bai, S/o.Kasinathan, aged about 21 years, who is 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/-

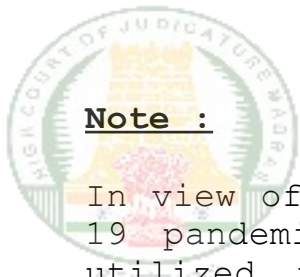
Assistant Registrar (CS II)

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Sub Assistant Registrar (CS)

pm



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

Copy to

The Joint Secretary to Government,
Public(Law & Order),
Government of TamilNadu,
Fort St.George, Chennai-9

H.C.P. (MD) No.177 of 2021
DATED : 14.09.2021

PS (CO)
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