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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.191 of 2021

Malarkodi

... Petitioner/Sister of the Detenu

vs.

1.State of Tamil Nadu

represented by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Ariyalur District,
Ariyalur.

3.The Superintendent,
Central Prison,
Tiruchirapalli.

... 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 Cr.M.P.No.76 of 2020, dated 29.10.2020 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's brother namely Siva @ Sivaprakasam, S/o. Ayyadurai, male, aged 43 years, who is detained in Central Prison, Tiruchirapalli, before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

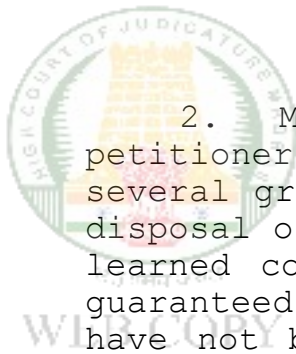
For Respondents : Mr.T.Senthil Kumar

Standing counsel for Government

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This habeas corpus petition has been filed by the sister of the detenu, namely, Siva @ Sivaprakasam, S/o. Ayyadurai, aged 43 years, against the detention order passed by the second respondent, in Cr.M.P.No.76 of 2020, dated 29.10.2020 branding him as 'Goonda' as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.



2. Mr.K.A.S.Prabhu, learned counsel appearing 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.T.Senthil Kumar, 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 01.02.2021 and it was received on 03.02.2021. Remarks were called for on the same day i.e. 03.02.2021 and it was received on 15.02.2021. The Deputy Secretary dealt with the matter on 15.02.2021. The concerned Minister dealt with the matter on 27.02.2021 and the representation came to be rejected on 27.02.2021. It is seen that in between 03.02.2021 and 15.02.2021, there was a delay of 7 days, after excluding the Government Holidays of 4 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 nay 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 Cr.M.P.No.76 of 2020, dated 29.10.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Siva @ Sivaprakasam, S/o. Ayyadurai, aged 43 years, who is now detained at Central Prison, Tiruchirapalli, 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 //

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Sub Assistant Registrar(CS)

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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,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Ariyalur District,
Ariyalur.
- 3.The Superintendent,
Central Prison,
Tiruchirapalli.
- 4.The Joint Secretary to Government,
Public Law and Order,
Fort St. George,
Chennai-9.



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

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KMK (CO)
LR (02.08.2021) 4P 6C