



WEB COPY

H.C.P(MD) No.187 of 2021

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.187 of 2021

Rajkumar

... Petitioner/detenu

-vs-

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli city,
Tiruchirappalli.

3.The Superintendent of Prison,
Tiruchirappalli Central Prison,
Tiruchirappalli.

... 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 C.No.35/Detention/C.P.O/T.C/2020 dated 23.12.2020 and quash the same and direct the Respondents to produce the body or person of the detenu by name Rajkumar, son of Vaithianathan, aged about 51 years, now confining as 'GOONDA' at Tiruchirappalli Central Prison before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

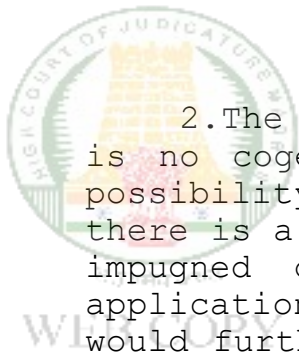
For Respondents : Mr.A.Thiruvadikumar

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, Rajkumar, S/o.Vaithianathan, aged about 51 years, challenging the detention order in C.No.35/Detention/C.P.O/T.C/2020 dated 23.12.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.



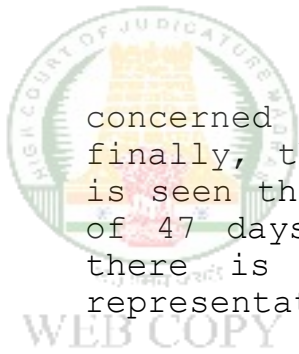
2.The learned counsel for the petitioner would state that there is no cogent materials available in the booklet relating to the possibility of the detenu coming out on bail, whereas, stating that there is a real possibility of coming out on bail by the detenu, the impugned detention order has been passed which reflects non-application of mind on the part of the detaining authority. He would further state that the detenu was arrested on 10.10.2020, but the detaining authority passed the detention order on 23.12.2020 and there is no explanation for the said delay. It is further submitted that several pages in the booklet are in English and he requested for the translated version copies of the said documents, but the same was not considered, further, 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 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 petitioner's 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 28.05.2021 which was received on 15.06.2021. Remarks on the said representation were called for on 15.06.2021 and it was received on 22.06.2021. The Deputy Secretary concerned has dealt with the representation on 22.06.2021 and the Hon'ble Minister



concerned has dealt with the representation on 09.08.2021 and finally, the representation came to be rejected on 09.08.2021. It is seen that in between 22.06.2021 and 09.08.2021, there is a delay of 47 days. After excluding the government holidays of 14 days, there is a delay of 33 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 33 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 C.No.35/Detention/C.P.O/T.C/2020 dated 23.12.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Rajkumar, son of Vaithianathan, aged about 51 years, who is now detained at Central Prison, Tiruchirappalli 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)

// True Copy //

/ /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 Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The Joint Secretary to Government of Tamil Nadu,
Public (Law & Order),
Secretariat, Chennai-600 009.
- 3.The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli city,
Tiruchirappalli.
- 4.The Superintendent of Prison,
Tiruchirappalli Central Prison,
Tiruchirappalli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
H.C.P.(MD) No.187 of 2021
DATED : 14.09.2021

RS (05.10.2021) 4P 6C