



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.197 of 2021

Palaniyammal

... Petitioner/ Mother of the Detenu

vs.

- 1.The State of Tamilnadu,
Represented by its Secretary to Government,
Home (Prohibition & Excise) Department,
Fort. St. George, Secretariat,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
O/o.District Magistrate and District Collector,
Pudukkottai District,
Pudukkottai.
- 3.The Superintendent,
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, calling for the entire records in detention order passed in P.D.O.No.01/2021 dated 13.01.2021 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 son namely Prem @ Balasubramanian, S/o.Natarajan, male, aged about 27 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

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

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 mother of the detenu, namely, Prem @ Balasubramanian, S/o.Natarajan, aged about 27 years, against the detention order passed by the second respondent in P.D.O.No.01 of 2021 dated 13.01.2021, 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 the detenu was arrested on 22.12.2020. But the arrest of the detenu was not properly intimated to either the family members or the relatives of the petitioner, which seriously affected the valuable right of the detenu to make effective representation for revocation of the detention order. He would further submit that the detention order came to be passed only with the delay of 22 days i.e., on 13.01.2021. According to the learned counsel, there is no live link between the alleged prejudicial activities of the petitioner and the order of detention. In addition to that, the detention order was passed against the detenu, on the basis of G.O.(D).No.286, Home, Prohibition and Excise (XVI), Department, dated 15.10.2020. But the said G.O., was not referred in the grounds of detention. Even though the learned counsel for 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.

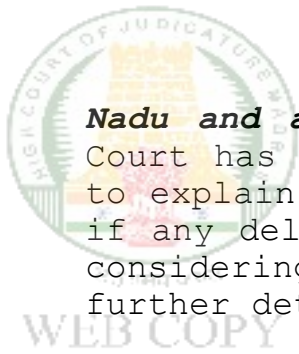
3. Mr.A.Thiruvadikumar, learned Standing counsel appearing for the respondents, on instructions, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. 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 03.02.2021 and it was received on 05.02.2021. Remarks were called for on 05.02.2021 and it was received on 19.02.2021. The Deputy Secretary dealt with the matter on 19.02.2021. The concerned Minister dealt with the matter on 25.02.2021 and the representation came to be rejected on 25.02.2021. It is seen that in between 05.02.2021 and 19.02.2021 and in between 19.02.2021 and 25.02.2021, there was a delay of 12 days, after excluding the Government Holidays of 6 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***

<https://hcservices.ecourts.gov.in/hcservices/>



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 12 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 Detention Order in P.D.O.No.01 of 2021, dated 13.01.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Prem @ Balasubramanian, S/o.Natarajan, aged about 27 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 (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

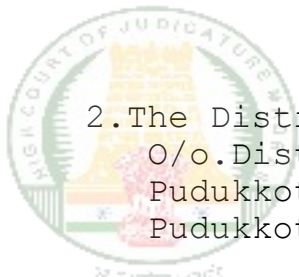
gbg/akv

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 Secretary to Government,
State of Tamil Nadu,
Home (Prohibition & Excise) Department,
Fort. St. George, Secretariat,
Chennai - 600 009.



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

3.The Superintendent,
Central Prison,
Tiruchirappalli.

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.197 of 2021
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RK (22.09.2021) 4P 6C