



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.06.2021

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

H.C.P. (MD) No.207 of 2021

Kameskaran ... Petitioner/Brother of the deten

-vs-

1.The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.

2.The District Collector and District Magistrate,
O/o.the District Collector and District Magistrate,
Tiruvarur District,
Tiruvarur.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records relating to the impugned detention order passed in C.O.C.No.10/2020 dated 30.12.2020 passed by the second respondent herein and set aside the same as illegal and consequently, direct the respondents herein to produce the body of the detainee, namely, Kalish @ Kalishwaran, male aged about 20 years, S/o.Iyappan, now confined at Central Prison, Tiruchirappalli, before this Court and thereafter, set him at liberty.

For Petitioner :Mr.K.A.S.Prabhu
For Respondents :Mr.S.Ravi
Standing Counsel for the State

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The Habeas Corpus Petition has been filed by the brother of the detainee, namely, Kalish @ Kalishwaran, son of Iyappan, Male aged



about 20 years, who has been branded as "Goonda" by the second respondent in C.O.C.No.10/2020 dated 30.12.2020, as contemplated under the Tamil Nadu Act 14 of 1982.

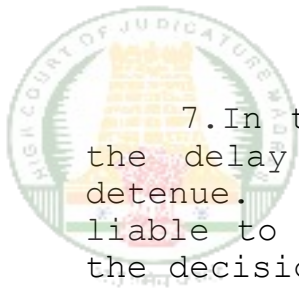
2. Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 30.12.2020, Mr.K.A.S.Prabhu, learned counsel for the petitioner would contend that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India has been violated and there is an inordinate and unexplained delay in considering the representation of the petitioner and on this sole ground, the detention order is liable to be set aside.

3. Per contra, Mr.S.Ravi, learned Standing Counsel appearing for the State would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detinue from indulging in similar offence in future, which would prejudice to the maintenance of the public order. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detinue and there is no infirmity or irregularity in the order of detention passed by the second respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

4. We have heard the rival submissions and perused the materials available on records.

5. In the instant case, it is not in dispute that the detinue was detained by the order of the second respondent dated 30.12.2020. Aggrieved over the same, a representation has been sent to the first respondent and the same was received on 29.01.2021. On the same day, remarks were called for and the same were received on 19.02.2021. The Deputy Secretary dealt with the matter on 19.02.2021. The concerned Minister dealt with the matter on 27.02.2021 and thereafter, the detinue's representation was rejected on 27.02.2021. It is seen that there was a delay of 20 days between 29.01.2021 and 19.02.2021. It is also seen that there are 6 Government holidays and after excluding the same, there is a delay of 14 days in considering the representation of the detinue.

6. In the case of **Rajammal vs. State of Tamil Nadu and another (1999 (1) SCC 417)** the Honourable Apex Court 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, there is absolutely no explanation for the delay of 14 days in considering the representation of the detenu. 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.

WEB COPY

8.In fine, the order of detention passed by the second respondent, in C.O.C.No.10/2020 dated 30.12.2020 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Kalish @ Kalishwaran, son of Iyappan, aged about 20 years, 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 (CSIII)

// 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.

gk

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.
- 2.The District Collector and District Magistrate,
O/o.the District Collector and District Magistrate,
Tiruvarur District,
Tiruvarur.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.



4.The joint secretary to Government,
public (Law&order),
Fort saint George,
Chennai-9.

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

H.C.P. (MD) No.207 of 2021
17.06.2021

GS (28.06.2021) 4P 6C