



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.232 of 2021

D.Aasarakani

... Petitioner

Vs.

1. State of Tamil Nadu,
rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
 2. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
 3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the entire records connected with the detention order passed in H.S(M) Confdl No.13/2021 dated 26.01.2021 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, the petitioner's son i.e., Arunkumar, aged about 19 years, S/o Duraipandi Nadar, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.S.Ravi

Standing Counsel for Tamil Nadu 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 mother of the detenu, namely, Arunkumar, male, aged about 19 years, son of Duraipandi Nadar, challenging the detention order in H.S(M) Confdl No.13/2021 dated 26.01.2021 passed by the second respondent,



branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

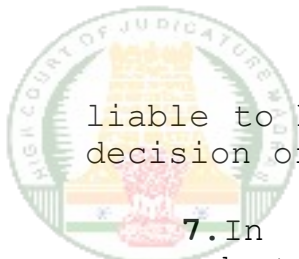
2. The learned counsel for the petitioner would submit that the detention order impugned in this habeas corpus petition is liable to be set aside on two grounds. Firstly, on the ground of delay in supplying the material and booklet after lapse of 5 days. Secondly, there is an inordinate and unexplained delay in considering the representation of the petitioner

3. Per contra, Mr.S.Ravi, learned Standing Counsel for the State submitted that the Detaining Authority has arrived at the subjective satisfaction based on the cogent materials placed by the Sponsoring Authority and there is no infirmity or irregularity in the impugned order of detention passed by the second respondent. He would further submit that all the documents have been supplied to the detenu in time. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu. Hence, he prayed for dismissal of the Habeas Corpus Petition.

4. In the matter on hand, perusal of the typed set of papers would show that the booklet and relevant documents have been furnished to the detenu on 01.02.2021, whereas, the detention order came to be passed on 26.01.2021. Section 8 of the Tamil Nadu Act 14 of 1982 mandates supplying of the copies to the detenu within 5 days. Further, in the instant case, it is not in dispute that the detenu was detained by the order of the second respondent dated 26.01.2021. Aggrieved over the same, a representation dated 08.02.2021 has been sent to the first respondent and the same was received on 11.02.2021 and on the same day, remarks were called for and the same was received on 18.02.2021. 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 detenu's representation was rejected on 01.03.2021. It is seen that there was delay of 13 days between 11.02.2021 and 18.02.2021 and 19.02.2021 and 27.02.2021. It is also seen that there are 5 Government holidays and after excluding the same, there is a delay of 8 days in considering the representation of the detenu.

5. 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 any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

6. In the case on hand, there is absolutely no explanation for the delay of 8 days in considering the representation of the detenu. Hence, in our considered view, the detention order is



liable to be set aside on the ground of delay also by following the decision of the Honourable Apex Court referred supra.

7. In fine, the order of detention passed by the second respondent, in H.S(M)Confdl No.13/2021 dated 26.01.2021 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Arunkumar, male, aged about 19 years, son of Duraipandi Nadar, now detained at Central Prison, Palayamkottai is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skn

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,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The Joint Secretary to Government,
Public (Law and Order)
Secretariat, Chennai-600 009.
3. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
4. The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
5. The Standing Counsel for Tamil Nadu Government, Law Office
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.232 of 2021

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RC (04.08.2021) 3P-6C