



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.247 of 2021

Uлага Jothi Noor @ Noor Bahar

... Petitioner

-vs-

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City,
Madurai.

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

4.The Inspector of Police,
C2 Subramaniyapuram (Crime) Police Station,
Madurai.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention order in No.05/BCDFGISSSV/2021, dated 16.01.2021, on the file of the Respondent No.2 and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Syed Ismail @ Satham @ Ottayan, son of Jeelani, aged about 22 years, now confined at Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.M.A.Jinnah

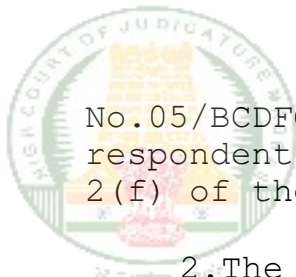
For Respondents : Mr.S.Ravi

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 wife of detenu, namely, Syed Ismail @ Satham @ Ottayan, son of Jeelani, aged about 22 years, challenging the detention order in



No.05/BCDFGISSSV/2021, dated 16.01.2021, on the file of the 2nd respondent, branding him as "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2.The learned counsel for the petitioner would state that the detaining authority mechanically arrived the subjective satisfaction relating to the possibility of the detenu for coming out on bail in the ground case. The documents relied by the detaining authority as similar case is no way similar to the detenu's case and hence, it is a clear case of non-application of mind on the part of the detaining authority in passing the detention order. The detaining authority pre-judged the future activities of the detenu that, if he comes out on bail, the detenu will indulge in such future activities, which will be prejudicial to the maintenance of public order. But there is no corresponding cogent materials in the booklet relating to the said statement and there is an inordinate delay in considering the petitioner's representation.

3.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. Thus, he would pray to quash the impugned order of detention.

4.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.

5.Heard the learned counsel for the petitioner as well as the respondents.

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 04.02.2021, which was received on 08.02.2021. Remarks on the said representation were called for on 08.02.2021 and it was received on 17.02.2021. The Deputy Secretary concerned has dealt with the representation on 17.02.2021 and the Hon'ble Minister concerned has dealt with the representation on



27.02.2021 and finally, the representation came to be rejected on 27.02.2021. It is seen that in between 08.02.2021 and 16.02.2021, there was a delay of 7 days, after excluding the Government holidays of 3 days, there was a delay of 4 days, in the first part and in between 17.02.2021 and 27.02.2021, there was a delay of 9 days, after excluding the government holidays of 2 days, there was a delay of 7 days, in total, there was a delay of 11 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 11 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 No.05/BCDFGISSSV/2021, dated 16.01.2021, passed by the 2nd respondent, is set aside. Consequently, the detenu, namely, Syed Ismail @ Satham @ Ottayan, son of Jeelani, aged about 22 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith, unless his presence or custody or detention is required in connection with any other case.

Sd/-

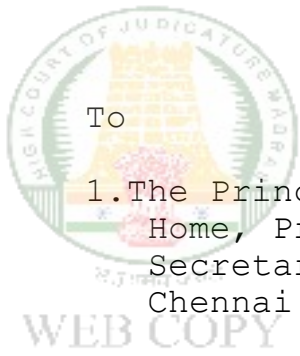
Assistant Registrar (CS II)

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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,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The Joint Secretary to Government of Tamilnadu,
Public (Law & Order),
Fort Saint George,
Chennai-9.
- 3.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City,
Madurai.
- 4.The Superintendent of Prison,
Central Prison,
Madurai.
- 5.The Inspector of Police,
C2 Subramaniyapuram (Crime) Police Station,
Madurai.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
H.C.P. (MD) No.247 of 2021
08.09.2021

_RS (22.09.2021) 4P 7C