



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.238 of 2021

Chandra Leela

... Petitioner/Mother of Detenue

-vs-

1.State of Tamil Nadu, rep. by its,
Additional Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records relating to the Detention Order passed by the 2nd respondent in his proceeding H.S(M)Confdl.No.127/2020 dated 30.12.2020 and quash the same and direct the respondents to produce the body of the person and detenu namely, Mathankumar, S/o Sunairaj, aged 27 years (now detained at Central Prison, Palayamkottai), before this Court and set him at liberty.

For Petitioner : Mr.V.Malaiyendran

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.]

The Habeas Corpus Petition has been filed by the mother of the detenu, namely, Mathankumar, S/o Sunairaj, male aged 27 years, who has been branded as "Goonda" by the second respondent in Detention Order in H.S(M)Confdl.No.127/2020 dated 30.12.2020, as contemplated under Section 2(f) of 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.V.Malaiyendran, 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.

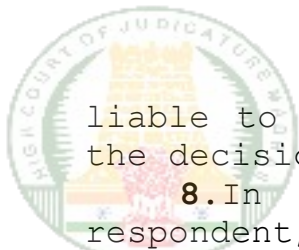
3.Per contra, Mr.S.Ravi, learned Standing Counsel appearing for the State would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging 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 detenu 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 detenu was detained by the order of the second respondent dated 30.12.2020. Aggrieved over the same, a representation has been sent to the Government and it has been received on 09.02.2021 and on the same day, remarks were called for. Remarks were received by the detaining authority on 11.02.2021 and the report was sent to the Government on 15.02.2021. It is seen that there was a delay of 5 days between 11.02.2021 and 15.02.2021 and after excluding two Government Holidays, there is a delay of 3 days. Further, the matter is placed before the Deputy Secretary on 18.02.2021 and it was considered by the concerned Minister on 27.02.2021. It is also seen that there was a delay of 8 days between 18.02.2021 and 27.02.2021 and after excluding 2 Government Holidays, there was a delay of 6 days. In total, there is delay of 9 days in considering the representation of the detenu.

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 any 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 9 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.

8. In fine, the order of detention passed by the second respondent, in H.S(M)Confdl.No.127/2020 dated 30.12.2020 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Mathankumar, S/o Sunairaj, male, aged 27 years 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 (CS-II)

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

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