



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.08.2021

CORAM:

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THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.256 of 2021

Murugesan ... Petitioner/father of the detenu

-vs-

1.The Government of Tamil Nadu,
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Police,
Tiruchirappalli City Commissioner Office,
Tiruchirappalli City.

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 connected with the detention order of the second respondent in Detention Order in C.No.32/Detention/C.P.O/T.C/2020 dated 09.12.2020 and detained at Central Prison, Tiruchirappalli and quash the same and direct the respondents to produce the body and person of the petitioner's son, namely, Thiruppathi, Son of Murugesan, aged about 23 years now confined at Central Prison, Tiruchirappalli and set him at liberty forthwith.

For Petitioner :Mr.B.Jameel Arasu

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.)**

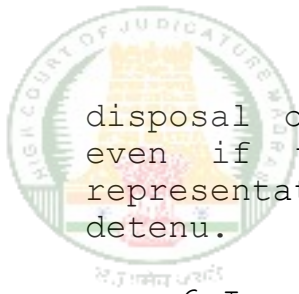
This habeas corpus petition has been filed by the father of the detenu, Thiruppathi, Son of Murugesan, aged about 23 years, challenging the detention order in C.No.32/Detention/C.P.O/T.C/2020 dated 09.12.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. The learned counsel for the petitioner would state that there is no bail application pending in the ground case in Crime No.987 of 2020 on the file of the Inspector of Police, Cantonment Police Station, Trichy City and in the adverse cases also, there is no bail application pending, a It is further submitted that remand extension order was not furnished to the detenu, which is in violation of the Constitution of India as well as the Circular issued by the Honourable Apex court.

3. It is further submitted that in the typed set of grounds furnished to the detenu, the copies are not at all legible and readable and the remand report is in English version and the translation copy is not clear and not properly translated and further, not able to read and the same causes serious prejudice to the detenu while making effective representation to the higher authorities. It is also submitted that in the typed set of papers, the detaining authority furnished the similar bail orders and the same are not connected with the present bail petition, which clearly shows non-application of mind and further, except the ground case, other adverse cases are false cases and there is no cogent materials to arrive at the subjective satisfaction.

4. 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.

5. 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.

6. In respect of non furnishing of remand extension order is concerned, the Standing Counsel would state that since there is no representation on behalf of the detenu to furnish a copy of the remand extension order, the copy was not served on him and which is in no way prejudice to the rights of the detenu. Thus, he would pray for dismissal of this petition.

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

8. Insofar as non-furnishing of remand extension order, in the absence of any request on behalf of the petitioner, the copy was not furnished, however, the original order was furnished and hence, no prejudice was caused to the detenu.

9. 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 07.01.2021 which was received on 11.01.2021. Remarks on the said representation were called for on 12.01.2021 and it was received on 22.01.2021. The Deputy Secretary concerned has dealt with the representation on 22.01.2021 and the Hon'ble Minister concerned has dealt with the representation on 04.02.2021 and finally, the representation came to be rejected on 04.02.2021. It is seen that in between 12.01.2021 and 22.01.2021, there is a delay of 9 days. After excluding the government holidays of 4 days, there is a delay of 5 days in the Ist Part. It is seen that in between 22.01.2021 and 04.02.2021, there is a delay of 12 days and after excluding the Government Holidays of 6 days, there is a delay of 6 days in IInd part and total, there is a delay of 11 days in considering the petitioner's representation.

10. 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.

11. 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.



12. In fine, the Habeas Corpus Petition is allowed. The detention order in C.No.32/Detention/C.P.O/T.C/2020 dated 09.12.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Thiruppathi, Son of Murugesan, aged about 23 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 (CS II)

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/ /2021

Sub Assistant Registrar (CS)

pm

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,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Tiruchirappalli City Commissioner Office,
Tiruchirappalli City.
- 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.256 of 2021
DATED :17.08.2021

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