



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
H.C.P.(MD) No.273 of 2021

Surya ... Petitioner/Detenu

-vs-

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Office of the Collector and District Magistrate,
Theni District,
Theni.

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

... 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 No.79/2020 dated 23.12.2020 and quash the same and direct the respondents to produce the body or person of the detenu by name Surya, Son of Mokkaian, aged about 24 years, now confining as 'Goonda' at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner :Mr.R.Alagumani

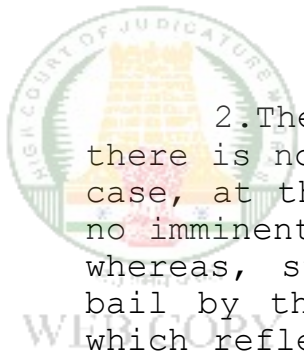
For Respondents :Mr.S.Ravi

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 detenu, namely Surya, Son of Mokkaian, aged about 24 years, challenging the detention order No.79/2020 dated 23.12.2020, 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 adverse cases and ground case, at the time of passing the detention order, as such, there is no imminent or real possibility of coming out on bail by the detenu, whereas, stating that there is real possibility of coming out on bail by the detenu, the impugned detention order has been passed which reflects non-application of mind on the part of the detaining authority. It is further submitted that the detenu was arrested on 09.11.2020 and the detaining authority passed the detention order against the detenu with a delay of 44 days ie., on 23.12.2020 and the delay is not properly explained by the detaining authority.

3. It is also submitted that the detaining authority furnished only the remand extension order and did not furnish the remand extension request application and the representation made in this regard is also not considered. It is further submitted that several pages in the booklet are in English and illegible and therefore, the detenu could not make effective representation. Further, the detention order was not intimated properly to the detenu's relatives and the sponsoring authority failed to follow the principles laid down by the Apex Court in D.K.Basu vs. State of West Bengal and A.K.Roy Cases while arresting and detaining the detenu, which would vitiate the detention order.

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 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.

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

7. Perusal of the proforma furnished by the learned Standing Counsel appearing for the respondents would show that as against the



impugned detention order, the petitioner made a representation to the first respondent dated 11.02.2021 and it was received on 16.02.2021. Remarks were called for on 16.02.2021 and it was received on 05.03.2021. The Deputy Secretary dealt with the matter on 05.03.2021. The concerned Minister dealt with the matter on 12.07.2021 and the representation came to be rejected on 15.04.2021. It is seen that in between 05.03.2021 and 12.04.2021, there was a delay of 37 days, after excluding the Government Holidays of 14 days, there was a delay of 23 days in considering the petitioner's representation.

8. At this juncture, it is useful to refer the decision of the Honourable Apex Court in the case of **Rajammal vs. State of Tamil Nadu and another**, reported in **1999 (1) SCC 417**, wherein, the Apex Court has 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.

9. In the case on hand, as stated supra, the delay of 23 days in considering the representation of the petitioner remains unexplained by the respondents. Hence, in our considered view, the detention order is liable to be set aside solely on the ground of delay by following the above decision of the Apex Court.

10. In fine, the Habeas Corpus Petition is allowed. The detention order in Detention Order No.79/2020 dated 23.12.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Surya, Son of Mokkaiyan, aged about 24 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)

// True Copy //

/ /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 Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Office of the Collector and District Magistrate,
Theni District,Theni.
- 3.The Superintendent of Prison,
Madurai Central Prison,Madurai District.
- 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.273 of 2021

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MGJ(26.08.2021) 4P 6C