



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :07.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.365 of 2021

S.Kaleshwari

... Petitioner/Mother of the Detenu

-vs-

1.State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Govt. of Tamil Nadu, Home, Prohibition &
Excise Department, Chennai - 9.

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

3.The Superintendent,
Central Prison,
Madurai.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for records pertaining to the proceedings of the 2nd respondent made in his proceedings in No.11/BCDFGISSSV/2021 dated 25.01.2021 and quash the same and set petitioner's son by name "Palanivelpandi, S/o.Sivapandi Krishnan, aged about 24 years" at liberty from 3rd respondent.

For Petitioner : Mr.C.Karthikeya

For Respondents : Mr.S.Ravi

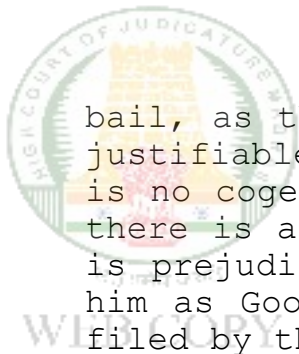
Standing counsel for the State

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 mother of the detenu, namely, Palanivelpandi, S/o.Sivapandi Krishnan, aged about 24 years, challenging the detention order in No.11/BCDFGISSSV/2021, dated 25.01.2021, 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 appearing for the petitioner would state that the apprehension entertained in the mind of the detaining authority that there is a real possibility of detenu coming out on



bail, as the bail application in the ground case is pending, is not justifiable for the reason that he has pre-judged the matter. There is no cogent materials to arrive at the subjective satisfaction and there is also no material to show that the activities of the detenu is prejudicial to the maintenance of public law and order to brand him as Goonda. The detention order does not disclose the affidavit filed by the sponsoring authority. In the booklet several documents are available in English, Tamil translated version of the copies were not served in the booklet and several documents are illegible and clear copies are not served to the detenu. Further, 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 04.02.2021. Remarks on the said representation were called for on 04.02.2021 and it was received on 16.02.2021. The Deputy Secretary concerned has dealt with the representation on 16.02.2021 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 04.02.2021 and 16.02.2021, there was a delay of 11 days and after excluding 4 Government Holidays, there was a delay of 7 days in the first part and in between 16.02.2021 and 27.02.2021, there was a delay of 10 days and after excluding 2 Government Holidays, there was a delay of 8 days in the second part, in total, there was a delay of 15 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 15 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.11/BCDFGISSSV/2021, dated 25.01.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Palanivelpandi, S/o.Sivapandi Krishnan, 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)

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. Principal Secretary to Government,
Govt. of Tamil Nadu,
Home, Prohibition & Excise Department,
Chennai - 9.

2. The Joint Secretary to Government of TamilNadu,
Public (Law & Order),
Fort Saint George,
Chennai-9.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Commissioner of Police,
Madurai City,
Madurai.

4.The Superintendent,
Central Prison,
Madurai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN

H.C.P. (MD) No.365 of 2021

07.09.2021

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