



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.285 of 2021

Devika

... Petitioner / Wife of Detenue

-vs-

1.The State of Tamil nadu,
Rep. By it is Principal Secretary to Government,
Home, Prohibition and Excise Department,
For St.George, Chennai - 600 009.

2.The District Collector & District Magistrate
of Thanjavur District,
Collector's Office,
Thanjavur District.

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 records relating to the detention order passed by the 2nd respondent in P.D.No.03 of 2021, dated 18.01.2021 and quash the same and direct the respondents to produce the detenue Thiru.Punniyamoorthy son of Ayyasamy, Male aged 35, who is detained at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.G.V.Vairam Santhosh

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 the detenu, namely, Punniyamoorthy, S/o.Ayyasamy, aged about 35 years, challenging the detention order in P.D.No.03 of 2021, dated 18.01.2021, passed by the second respondent, branding him as "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14



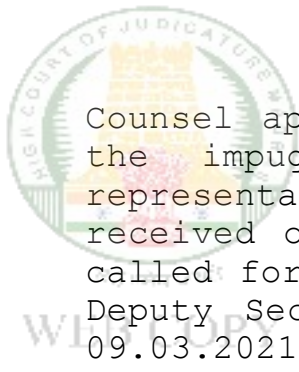
2.The learned counsel for the petitioner would state that the delay in supplying connected papers with illegible documents has curtailed the rights of detenu in making an effective representation. The subjective satisfaction arrived at by the detaining authority is not based on cogent materials and it is only *ipsi dixit*. In the ground case only bail application is pending, under such circumstances, it is not possible for the detenu in coming out on bail. Hence, it is inappropriate for the detaining authority to infer that the detenu is very likely to come out on bail. The place of arrest and time of arrest were not mentioned in the arrest memo, which would vitiate the order of detention. The Tamil and English version of the grounds of detention and booklet differs and therefore, the detenu was not able to effectively represent the case before the advisory board. 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 in the booklet 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.Review 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 09.02.2021, which was received on 15.02.2021. Remarks on the said representation were called for on 15.02.2021 and it was received on 09.03.2021. The Deputy Secretary concerned has dealt with the representation on 09.03.2021 and the Hon'ble Minister concerned has dealt with the representation on 12.04.2021 and finally, the representation came to be rejected on 15.04.2021. It is seen that in between 09.03.2021 and 12.04.2021, there was a delay of 33 days. After excluding the government holidays of 9 days, there was a delay of 24 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 24 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 P.D.No.03 of 2021, dated 18.01.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Punniyamoorthy, S/o.Ayyasamy, aged about 35 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/-

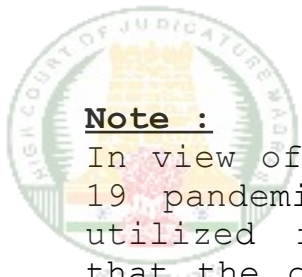
Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

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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,
The State of Tamil nadu,
Home, Prohibition and Excise Department,
For St.George,
Chennai - 600 009.
- 2.The District Collector & District Magistrate
Thanjavur,
Collector's Office,
Thanjavur District.
3. The Superintendent
Central Prison,
Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

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

H.C.P. (MD) No.285 of 2021
07.09.2021

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