



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :14.09.2021

CORAM:

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

H.C.P. (MD) No.295 of 2021

Mumtaj Begam

... Petitioner/
Mother of the detenu

-VS-

1. The State of Tamil Nadu,
Represented by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.
 2. The District Magistrate and District Collector,
Tiruchirappalli District,
Tiruchirappalli.
 3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli,
Tiruchirappalli District.
- ...Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, or any other or direction in the nature of a writ, calling for the records relating to the Detention Order passed by the second respondent in Detention Order Cr.M.P.No.79/2020, dated 24.11.2020 and quash the same and direct the respondents to produce the body or person of the detenu namely Raja alias Thalip Raja, S/o. Shahul Hammed, aged about 26 years (now detained at Central Prison, Madurai) before this Hon'ble Court and set him at liberty.

For Petitioner	:Mr.B.Arun
For Respondents	:Mr.A.Thiruvadikumar
	Standing counsel for the State



O R D E R

(Order of the Court was made by J.NISHA BANU, J.)

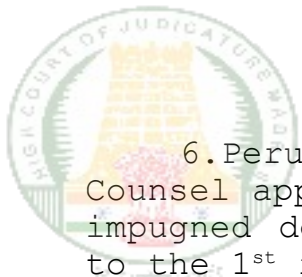
This habeas corpus petition has been filed by the mother of the detenu, namely, Raja alias Thalip Raja, S/o. Shahul Hammed aged about 26 years, challenging the detention order in Cr.M.P.No.79/2020, dated 24.11.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2 (f) of Tamil Nadu Act 14 of 1982.

2.The learned counsel for the petitioner would state that the detenu has not filed any bail application in the ground case in Crime No.2204 of 2020, as such, there is no imminent or real possibility of coming out on bail by the detenu, whereas, stating that there is a 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. He would further state that the arrest of the detenu was not informed either to the relatives or family members of the detenu and several pages in the typed set of grounds furnished to the detenu, the copies are not legible and readable, further the detaining authority has referred G.O(D)No.199 in the detention order, but a copy of the said G.O has not been furnished to the petitioner, which caused serious prejudice to the detenu from making effective representation to the higher authorities and further, there is a delay in considering the representation.

3.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.

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

5.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.



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 17.02.2021 which was received on 22.02.2021. Remarks on the said representation were called for on 23.02.2021 and it was received on 04.06.2021. The Deputy Secretary concerned has dealt with the representation on 04.06.2021 and the Hon'ble Minister concerned has dealt with the representation on 26.07.2021 and finally, the representation came to be rejected on 26.07.2021. It is seen that in between 23.02.2021 and 04.06.2021, there is a delay of 100 days. After excluding the government holidays of 32 days, there is a delay of 68 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 68 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 Cr.M.P.No.79/2020, dated 24.11.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Raja alias Thalip Raja, S/o. Shahul Hammed, aged about 26 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/-

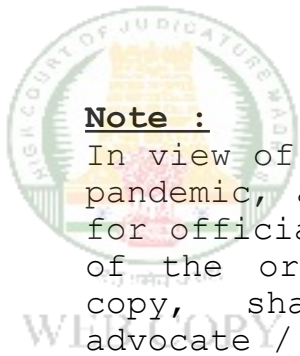
Assistant Registrar (W)

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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 Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The District Magistrate and District Collector,
Tiruchirappalli District,
Tiruchirappalli.
3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli,
Tiruchirappalli District.
4. The Joint Secretary to Government,
Public(Law & order) Department,
Fort St. George,
Chennai - 600 009.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P.(MD) No.295 of 2021
DATED : 14.09.2021

MGJ(06.10.2021) 4P 6C