



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :11.08.2021

CORAM:

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

H.C.P. (MD) No.301 of 2021

S.Krishnaveni ... Petitioner/wife of the detenu
-vs-

1.The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Ariyalur District,
Ariyalur.

3.The Superintendent of Central Prison,
Trichy Central Prison,
Trichy 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 in Cr.M.P.No.72 of 2020 dated 15.10.2020 on the file of the second respondent and quash the same and direct the respondents to produce the body and person of the petitioner's husband namely "Senthil @ Senthilkumar @ Senthilmurugan, S/o.Muthurakku @ Muthurakkan" aged about 37 years now confined at Central Prison, Trichy, before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.R.Prithiviraj

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, Senthil @ Senthilkumar @ Senthilmurugan, S/o.Muthurakku @ Muthurakkan" aged about 37 years, challenging the detention order in Cr.M.P.No.72 of 2020 dated 15.10.2020, 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 in the ground case registered in Crime No.1115 of 2020 for the offence under Sections 454 and 511 @ 454, 511 and 506(ii) I.P.C, the petitioner's husband/detenu has been arrested on 01.10.2020 and when his bail application in the ground case has been dismissed even prior to the passing of the impugned detention order, the detaining authority ought not to have stated in the grounds of detention that there is a real possibility of the detenu coming out on bail which reflects non application of mind on the part of the detaining authority. He would further state that the arrest of the detenu in the ground case was not intimated to the petitioner/wife and the similar bail application order in CrI.M.P.No.721/2017 referred to in the booklet is not at all relevant to the circumstances of the ground case filed against the detenu and the order made in CrI.M.P.No.721/2017 was not furnished in vernacular language to the detenu. It is further stated that the detenu is not the named accused in the FIR and without securing the original accused, the police roped the detenu in the said case only to detain the detenu. Further, the materials regarding the adverse cases and the confession statement of the detenu alleged to have been obtained by the 4th respondent are not furnished in the booklet. He would also state that though the detention order was passed on 15.10.2020, the booklet dated 22.10.2020 was furnished to the detenu only after he makes representation dated 08.11.2020 before the 1st respondent and due to non supply of the booklet, the detenu and the petitioner could not give effective representation, as such, the impugned orders suffers from violation of the principles of natural justice.

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 both sides and perused the materials available on record.

6. In the instant case, the proforma furnished by the learned Standing Counsel for the State would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 08.11.2020 and it was received on 10.11.2020. Remarks were called for on the same day i.e. 10.11.2020 and it was received on 22.12.2020. The Deputy Secretary dealt with the matter on 22.12.2020. The concerned Minister dealt with the matter on 09.01.2021 and the representation came to be rejected on 11.01.2021. It is seen that in between 10.11.2020 and 22.12.2020, there was a delay of 41 days, after excluding the Government Holidays of 7 days, there was a delay of 34 days in the Ist part and in between the Government Holidays of 6 days, there was a delay of 12 days in the IInd part, and totally there was a delay of 46 days in considering the petitioner's representation.

7. 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.

8. In the case on hand, as stated supra, the delay of 46 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.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in Cr.M.P.No.72 of 2020 dated 15.10.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, "Senthil @ Senthilkumar @ Senthilmurugan, S/o.Muthurakku @ Muthurakkan" aged about 37 years, who is now detained at Central Prison, Trichy, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

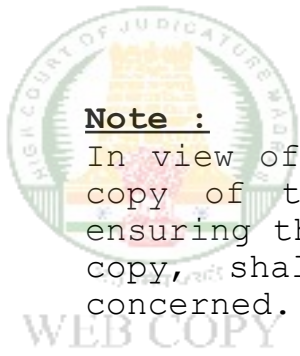
Sd/-

Assistant Registrar ()

// 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.The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department, Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Ariyalur District, Ariyalur.
- 3.The Superintendent of Central Prison,
Trichy Central Prison, Trichy District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Government,
Public (Law & Order),
Fort saint George,
Chennai-600 009.

H.C.P. (MD) No.301 of 2021
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