



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :08.09.2021

CORAM:

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

H.C.P. (MD) No.329 of 2021

N.Umaiyal ... Petitioner/Wife of Detenue

-vs-

- 1.State of Tamil Nadu, Rep.by
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records in detention order passed in Cr.M.P.No.07/2021, dated 16.02.2021, on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Nagaraj alias Poonai Nagaraj, S/o.Velu, male aged 47 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner :Mr.K.A.S. Prabhu

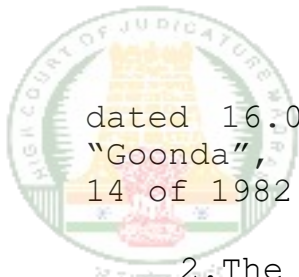
For Respondents :Mr.S.Ravi

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 detenue, namely, Nagaraj alias Poonai Nagaraj, S/o.Velu, aged 47 years, challenging the detention order in No.Cr.M.P.No.07/2021,



dated 16.02.2021, passed by the 2nd respondent, branding him as "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

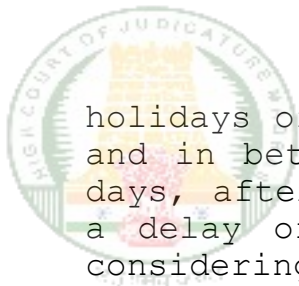
2.The learned counsel for the petitioner would state that non-supply of vital documents in respect of all adverse cases and ground case, which were relied upon by the detaining authority would deprive the detenu from making effective representation to the authorities and would amount to infringement of right guaranteed under Article 22(5) of the Constitution of India. 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. 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 24.02.2021, which was received on 26.02.2021. Remarks on the said representation were called for on 26.02.2021 and it was received on 17.03.2021. The Deputy Secretary concerned has dealt with the representation on 18.03.2021 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 26.02.2021 and 17.03.2021, there was a delay of 18 days, after excluding the Government



holidays of 7 days, there was a delay of 11 days, in the first part and in between 18.03.2021 and 12.04.2021, there was a delay of 24 days, after excluding the government holidays of 11 days, there was a delay of 13 days, in total, there was a delay of 24 days in considering the petitioner's representation.

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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 No.Cr.M.P.No.07/2021, dated 16.02.2021, passed by the 2nd respondent, is set aside. Consequently, the detenu, namely, Nagaraj alias Poonai Nagaraj, S/o.Velu, aged 47 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 (Ad-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mpk

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,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law & Order) Fort St.Goerge,
Chennai 600 009
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.329 of 2021
08.09.2021

Na (CO)
KB(22.09.2021) 4P 6C