



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.333 of 2021

Jayamary

... Petitioner

-vs-

1.The Additional Chief Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector cum District Magistrate,
Tirunelveli, Tirunelveli District.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai
Tirunelveli 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 records pertaining to the detention order in M.H.S.Confdl No.02/2021 dated 12.01.2021 passed by the second respondent and set-aside the same by setting the detenu by name Jacob, S/o. Jeyakumar Dhanapaul, aged about 29 years at his liberty, now detain at Central Prison, Palayamkottai, Tirunelveli.

For Petitioner : Mr.K.Sivabalan

For Respondents : Mr.S.Ravi

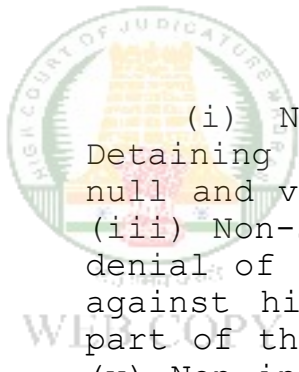
Standing counsel for the State

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, Jacob, S/o. Jeyakumar Dhanapaul, aged about 29 years, challenging the detention order in M.H.S.Confdl No.02/2021 dated 12.01.2021, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2.Mr.K.Sivabalan, the learned counsel appearing for the petitioner assails the detention order on the following grounds:



(i) No public order has been affected, as alleged by the Detaining Authority, and therefore, the order of detention becomes null and void; (ii) Prejudicial to the maintenance of public order; (iii) Non-supplying of Tamil version in the relied documents is the denial of detenu's right while making the effective representation against his detention order; (iv) Non application of mind on the part of the detaining authority, while passing the detention order; (v) Non intimation of arrest to the friends or any other relatives; and (vi) Delay in considering the representation of the petitioner.

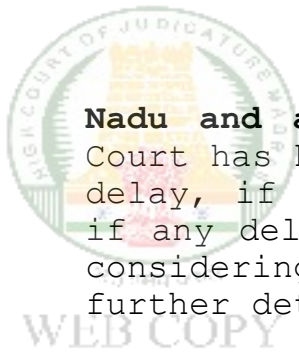
3. Even though the petitioner has raised the above grounds to quash the impugned detention order, the learned counsel for the petitioner would mainly place arguments on the ground of delay in disposal of the petitioner's representation. In this regard, the learned counsel for the petitioner would state 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 11.02.2021, which was received on 18.02.2021. Remarks on the said representation were called for on 18.02.2021 and it was received on 11.03.2021. The Deputy Secretary concerned has dealt with the representation on 12.03.2021 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 12.03.2021 and 12.04.2021, there was a delay of 30 days and after excluding 12 days Government Holidays, there was delay of 18 days in considering the petitioner's consideration.

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 18 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 M.H.S.Confdl No.02/2021, dated 12.01.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Jacob, S/o.Jeyakumar Dhanapaul, aged about 29 years, who is now detained at Central Prison, Palayamkottai, Tirunelveli, 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 I)

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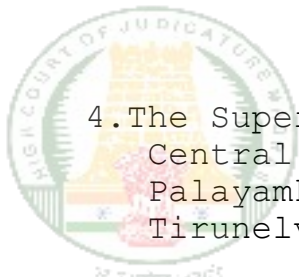
Sub Assistant Registrar(CS)

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 of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
- 2.The Joint Secretary to Government of Tamil Nadu,
Public (Law & Order),
For Saint George,
Chennai-9.
- 3.The District Collector cum District Magistrate,
Tirunelveli, Tirunelveli District.



4.The Superintendent of Prison,
Central Prison,
Palayamkottai
Tirunelveli District.

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

+1 CC to M/s.K.SIVABALAN, Advocate (SR-26682[F] dated 18/08/2021)

H.C.P. (MD) No.333 of 2021

DATED : 16.08.2021

_RS (27.08.2021) 4P 7C