



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.347 of 2021

A.Anjalai ... Petitioner/mother of the detenu

-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,
Ariyalur District,
Ariyalur.

3.The Superintendent of Prison,
Central Prison,
Trichy,
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 passed in Cr.M.P.No.71 of 2020 dated 08.10.2020 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son ie., Balaji, aged about 24 years, S/o.Asaithambi, now detained at Central Prison, Trichy before this Court abd set him at liberty forthwith.

For Petitioner :Mr.N.Pragalathan

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, Balaji, S/o.Asaithambi, aged about 24 years, challenging the detention order in Cr.M.P.No.71 of 2020 dated



08.10.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

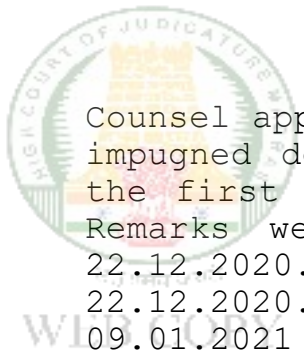
2.The learned counsel for the petitioner would state that in the ground case registered on the file of Kuvagam Police Station in Crime No.193 of 2020 under Section 379 of I.P.C, the petitioner's son/detenu has been arrested on 14.08.2020 and no bail application is filed by the detenu, as such, there 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 if the detaining authority has real intention to brand the detenu as goonda, he ought to have passed the detention order within 30 days from the date of remand in the ground case, whereas, it is more than 50 days in the present case. It is further submitted that several pages in the typed set of grounds furnished to the detenu, the copies are not legible and readable which caused serious prejudice to the detenu from making effective representation to the higher authorities and there is no cogent materials to arrive at the subjective satisfaction and there is also no material to show that the activities of the detenu is prejudicial to the maintenance of public law and order to brand him as goonda.

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 furnished by the learned Standing



Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent dated Nil and it was received on 23.11.2020. Remarks were called for on 22.12.2020 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 23.11.2020 and 22.12.2020, there was a delay of 28 days, after excluding the Government Holidays of 4 days, there was a delay of 24 days in the Ist part and in between 22.12.2020 and 09.01.2021, there was a delay of 17 days, after excluding the Government Holidays of 6 days, there was a delay of 11 days in the IInd Part and totally there was a delay of 35 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 35 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.71 of 2020 dated 08.10.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Balaji, S/o.Asaithambi, aged about 24 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 (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pmNote : 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.

<https://hcservices.ecourts.gov.in/hcservices/>



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,
Ariyalur District,
Ariyalur.
- 3.The Superintendent of Prison,
Central Prison,
Trichy,
Trichy District.
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.347 of 2021
11.08.2021

PS (CO)
KB(25.08.2021) 4P 6C