



WEB COPY

H.C.P.(MD) No.351 of 2021

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.351 of 2021

Muruganathan

... Petitioner/detenu

-vs-

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

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Ramanathapuram District.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai 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 Writ or direction calling for the entire records, connected with the detention order of the respondent No.2 in TN.P.D.A.B.C.D.F.G.I.S.S.S.V.No.7/Goonda/2021 dated 18.02.2021 and quash the same and direct the respondent to produce the body or person of the detenu by name Muruganathan, S/o.Kottaisamy, aged about 41 years, now detained as "Goonda" at Madurai Central Prison before this Honourable Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

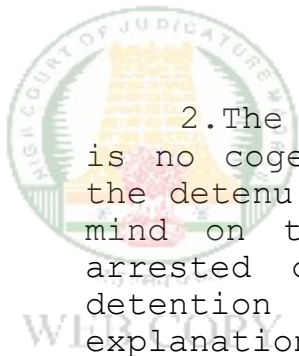
For Respondents : Mr.S.Ravi

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 detenu, namely, Muruganathan, S/o.Kottaisamy, aged about 41 years, challenging the detention order in TN.P.D.A.B.C.D.F.G.I.S.S.S.V.No.7/Goonda/2021 dated 18.02.2021, 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 there is no cogent material to arrive at a subjective satisfaction that the detenu will come out on bail, which shows the non-application of mind on the part of the detaining authority. The detenu was arrested on 01.12.2020 and the detaining authority passed the detention order against the detenu after 79 days and there is no explanation for the said delay. That apart, the order of detention was not intimated properly to the detenu's relatives and the Sponsoring Authority failed to follow the principles laid down by the Honourable Supreme Court in D.K.Basu vs. State of West Bengal and A.K.Roy cases while arresting the detaining the detenu. The Tamil and English version of the grounds of detention and booklet differs and therefore, the detenu is not able to prefer effective representation before the Advisory Board and further, there is a delay in considering the petitioner's 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 26.02.2021 which was received on 02.03.2021. Remarks on the said representation were called for on 02.03.2021 and it was received on 05.03.2021. The Deputy Secretary concerned has dealt with the representation on 05.03.2021 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 05.03.2021 and 12.04.2021, there is a delay of 37 days. After excluding the government holidays of 14 days, there is a delay of 23 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 23 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 TN.P.D.A.B.C.D.F.G.I.S.S.S.V.No.7/Goonda/2021 dated 18.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Muruganathan, S/o.Kottaisamy, aged about 41 years, who is now detained at Madurai Central Prison, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (Records)

// 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 Cheif Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.



2.The Joint Secretary to Government of TamilNadu,
Public (Law & Order),
Fort Saint George,
Chennai-9.

3.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Ramanathapuram District.

4.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

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

ORDER MADE IN
H.C.P. (MD) No.351 of 2021
DATED : 08.09.2021

_RS (27.09.2021) 4P 6C