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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.370 of 2021

K.Selvi

... Petitioner/Mother of the detenu

vs.

1.State of Tamil Nadu,
represented 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,
Nagapattinam District,
Nagapattinam.

3.The Superintendent,
Central Prison,
Tiruchirapalli.

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the entire records in detention order passed in C.O.C.No.3 of 2021, dated 22.02.2021, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Alex @ Alexpandiyar, S/o. Kesavan, male, aged about 25 years, who is detained in Central Prison, Tiruchirapalli before this Court and set him at liberty.

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

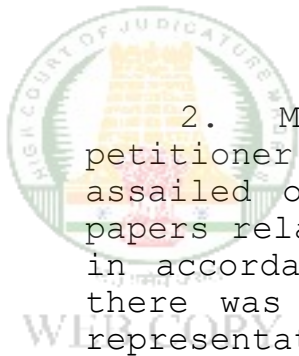
For Respondents : Mr.S.Ravi

Standing counsel for Government

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This habeas corpus petition has been filed by the mother of the detenu, namely, Alex @ Alexpandiyar, S/o.Kesavan, aged about 25 years, against the detention order passed by the second respondent in No.C.O.C.No.3 of 2021, dated 22.02.2021, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.



2. Mr.K.A.S.Prabhu, learned counsel appearing for the petitioner would argue that the impugned detention order is assailed on two grounds. Firstly, the booklet and other relevant papers relating to the detention order were not served on the detenu in accordance with Section 8(1) of the Act 14 of 1982. Secondly, there was an inordinate and unexplained delay in considering the representation of the petitioner.

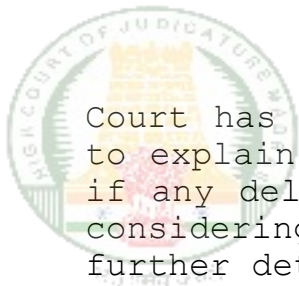
3. On the other hand, Mr.S.Ravi, learned Standing counsel appearing for the respondents, on instructions, would submit that the second respondent chose to pass the detention order after having satisfied with the materials supplied by the Sponsoring Authority. It is the submission of the learned Standing counsel that the provisions of the relevant Act has been strictly followed by the Detaining Authority. It is further contended that the representation of the detenu has been disposed of within the reasonable time and there is no delay in considering the representation and even if there is any delay in disposal of the representation, it has not caused any prejudice to the rights of the detenu and hence, prayed for dismissal of the habeas corpus petition.

4. Heard both sides and perused the materials available on record.

5. From the perusal of the records, it is seen that the detenu was arrested in Crime No.17 of 2021, on the file of Nagapattinam Town Police on 08.01.2021, for the offences under Sections 147, 148, 294(b), 447, 324, 506(ii) and 307 of I.P.C. The Detention Order came to be passed on 22.02.2021, but the booklet and other relevant papers relating to the detention order were served only on 02.03.2021. Section 8 of the Act stipulates that materials have to be served on the detenu within a period of five days, however, in this case, the materials have been served to the detenu only after a lapse of 7 days.

6. Further, in the instant case, the proforma furnished by the learned Standing counsel would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 03.03.2021 and it was received on 05.03.2021. Remarks were called for on the same day i.e. 05.03.2021 and it was received on 30.03.2021. The Deputy Secretary dealt with the matter on 30.03.2021. The concerned Minister dealt with the matter on 12.04.2021 and the representation came to be rejected on 15.04.2021. It is seen that in between 05.03.2021 and 30.03.2021, there was a delay of 16 days, after excluding the Government Holidays of 8 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.

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8. In the case on hand, as stated supra, the delay of 16 days in considering the representation of the petitioner has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the ground of delay and violation of Section 8(1) of the Act 14 of 1982.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in C.O.C.No.3 of 2021, dated 22.02.2021 passed by the second respondent, is set aside. Consequently, the detenu, namely, Alex @ Alexpandiyan, S/o.Kesavan, aged about 25 years, who is now detained at Central Prison, Tiruchirapalli 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-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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,
Nagapattinam District,
Nagapattinam.
- 3.The Superintendent,
Central Prison,
Tiruchirapalli.

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



4.The Joint Secretary to Government,
Public Law and Order,
Fort St. George,
Chennai-9.

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

H.C.P. (MD) No.370 of 2021
06.07.2021

LS (CO)
LR (16.07.2021) 4P 6C