



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :28.09.2021
CORAM:

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

H.C.P. (MD) No.373 of 2021

Palanikumar

... Petitioner/ detenu

-Vs-

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

2. The Commissioner of Polcie,
Office of the Commissioner of Police,
Madurai city,
Madurai..

3. The Superintendent of Prison,
Madurai Central Prison,Madurai.

... 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 of the respondent No.2 in No.15/BCDFGISSSV/2021 dated 05.02.2021 and quash the same and direct the respondents to produce the body or person of the detenu by name Palanikumar, S/o. Karuppaiah, aged about 31 years, now detained as "Goonda" at Madurai Central Prison before this court and set him at liberty.

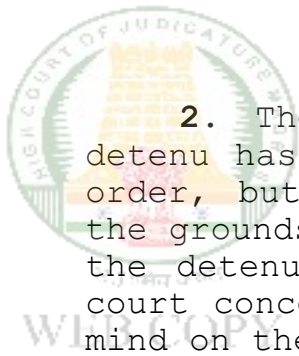
For Petitioner :Mr.R.Alagumani

For Respondents :Mr.S.Ravi
Additional Public Prosecutor

O R D E R

(Order of the Court was made by V. BHARATHIDASAN, J.)

This habeas corpus petition has been filed by the detenu, namely, Palanikumar, S/o. Karuppaiah, aged about 31 years, challenging the detention order in No.15/BCDFGISSSV/2021 dated 05.02.2021 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 submits that the detenu has not filed any bail application at the time of detention order, but the detaining authority mentioned in paragraph No.4 of the grounds of the detention order that there is real possibility of the detenu coming out on bail by filing bail petition before the court concerned, which would clearly reflect the non-application of mind on the part of the detaining authority.

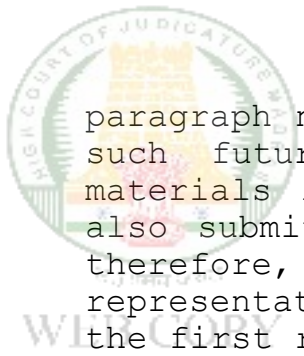
3. The learned counsel for the petitioner further submits that the detaining authority mechanically came to the conclusion relating to the possibility of the detenu for coming out on bail in the ground case by placing reliance on the bail order for some other accused person, which is not similar to the ground case. The Hon'ble Apex Court repeatedly held that the bail order granted to some other accused person in some other case is not a cogent material for arriving the subjective satisfaction relating to the possibility of the detenu for coming out on bail in the ground case.

4. Further contentions of the learned counsel for the petitioner are that the second respondent failed to report the fact of detention of the detenu with grounds and booklet to the first respondent forthwith, but with delay, which is violation of Section 3(3) of Act No.14 of 1982 and on 02.03.2021, the detenu sent representation to the first respondent requesting him to give information regarding the date of placing of all documents before the first respondent and the date of receiving the document by the first respondent for enabling the detenu about the compliance of mandatory requirement under section 3(3) of Act 14 of 1982, but, the same was not considered expeditiously.

5. The learned counsel for the petitioner, while projecting the lethargic attitude of the authorities, has drawn the attention of this Court to Section 10 of the TamilNadu Act No.14 of 1982, which reads as that the first respondent shall place all relevant documents relating to the detention order before the Advisory Board within three weeks from the date of detention. According to the learned counsel for the petitioner, the detenu sent representation to the first respondent through the third respondent but the same was not placed before the Advisory Board as per Section 10 of the TamilNadu Act No.14 of 1982 and therefore, it is clear that the mandatory provisions are not followed by the authorities.

6. The learned counsel would vehemently contend that the detenu was arrested on 21.10.2020, the detaining authority passed detention order against the detenu with 107 days delay i.e on 05.02.2021 and the reason for the delay has not been explained by the detaining authority in the grounds of detention and booklet.

7. While pinpointing the prejudging attitude of the detaining authority, the learned counsel submits that it is mentioned in

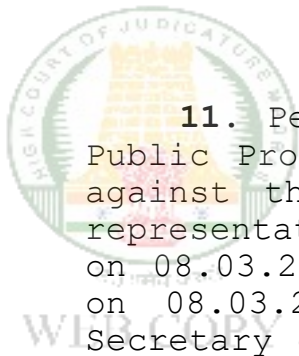


paragraph number 5 that if he comes out on bail, he will indulge in such future activities and there are no corresponding cogent materials in the booklet relating to the said statement. He would also submit that several pages in the booklet are in English and therefore, the detenu could not understand and prefer effective representation. On 02.03.2021, the petitioner sent representation to the first respondent requesting him to supply the translated version copies of the said documents and the same was also not considered expeditiously. Even though it is stated in the detention order that the arrest intimation was informed to the wife of the detenu through SMS, they did not receive any such information from the sponsoring authority. The sponsoring authority failed to follow the principles laid down by the Hon'ble Supreme Court in **D.K.Basub-vs-State of West Bengal and A.K.Roy** Cases while arresting and detaining the detenu. The learned counsel also submits that there are 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. It is further submitted that 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.

8. 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.

9.The learned Additional Public Prosecutor 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.

10. Heard the learned counsel on behalf of the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondents.



11. Perusal of the proforma produced by the learned Additional Public Prosecutor appearing for the respondents would show that as against the impugned detention order, the petitioner has made a representation to the 1st respondent on 02.03.2021 which was received on 08.03.2021. Remarks on the said representation were called for on 08.03.2021 and it was received on 08.03.2021. The Deputy Secretary concerned has dealt with the representation on 09.03.2021 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 09.03.2021 and 12.04.2021, there is a delay of 33 days. After excluding the government holidays of 12 days, there is a delay of 21 days in considering the petitioner's representation.

12. 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.

13. In the case on hand, as stated supra, the delay of 21 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.

14. In fine, the Habeas Corpus Petition is allowed. The detention order in No.15/BCDFGISSSV/2021 dated 05.02.2021 passed by the second respondent, is set aside. Consequently, the detenu, Palanikumar, S/o. Karuppaiah, aged about 31 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

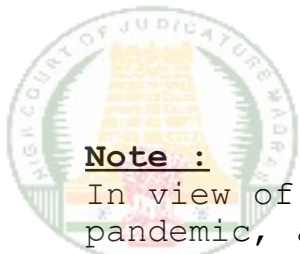
Assistant Registrar (CS III)

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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 Principal Secretary to Government,
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Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.
2. The Commissioner of Polcie,
Office of the Commissioner of Police,
Madurai city,
Madurai..
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort St. George,
Chennai - 600 009.

H.C.P.(MD) No.373 of 2021

DATED : 28.09.2021

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MGJ(26.11.2021) 5P 6C