



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P.(MD) No.386 of 2021

S.Rajendran ... Petitioner/Father of the detenu

-vs-

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

2.The Commissioner of Police,
Madurai City,
Madurai.

3.The Superintendent,
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, to call for records pertaining to the proceedings of the second respondent made in his proceedings in No.06/BCDFGISSSV/2021 dated 16.01.2021 and quash the same and set the petitioner's son by name Malairajan @ Ottaiyan, S/o.Rajendran, aged about 25 years at liberty from third respondent.

For Petitioner :Mr.C.Karthikeya

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 father of the detenu, namely, Malairajan @ Ottaiyan, S/o.Rajendran, aged about 25 years challenging the detention order in No.06/BCDFGISSSV/2021 dated 16.01.2021, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Mr.C.Karthikeya, learned counsel appearing for the petitioner, would argue that the Detaining Authority, to arrive at the subjective satisfaction, has stated that the detenu likely to be



released on bail in the ground case. He would further submit that the subjective satisfaction reached by the Detaining Authority is without any basis and there is no imminent possibility of the detenu coming out on bail by filing bail petition before the appropriate Court. Further, the detenu was surrendered before the Judicial Magistrate No.VI, Madurai, in connection with the case in Crime No.1774 of 2020, dated 28.10.2020, but the Detaining Authority has passed the detention order against the detenu only on 16.01.2021 and the delay for passing the detention order was not properly explained by the Detaining Authority.

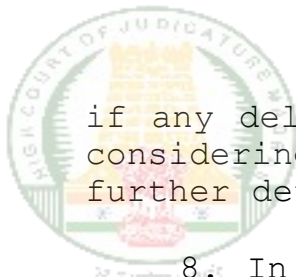
3. Mr.S.Ravi, learned Additional Public Prosecutor appearing for the State, on instructions, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. It is also stated that 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 the learned counsel appearing on either side and perused the materials available on record.

5. Even though the learned counsel for the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representation. It is submitted by the learned counsel for the petitioner 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. In the instant case, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 29.01.2021 and it was received on 18.02.2021. Remarks were called for on the same day ie., on 18.02.2021 and it was received on 26.02.2021. The Deputy Secretary dealt with the matter on 26.02.2021. 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 26.02.2021 and 12.04.2021, there was a delay of 44 days, after excluding the Government Holidays of 17 days, there was a delay of 27 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 27 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 solely on the ground of delay by following the decision of the Honourable Apex Court referred supra.

9. In fine, the Habeas Corpus Petition is allowed. The detention order No.06/BCDFGISSSV/2021, dated 16.01.2021, passed by the second respondent, is set aside. Consequently, the detenu, Malairajan @ Ottaiyan, S/o.Rajendran, aged about 25 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)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

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,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent,
Central Prison,
Madurai.

<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.

ORDER MADE IN

H.C.P. (MD) No.386 of 2021

DATED : 06.10.2021

TP (CO)
GC/JC (11.11.2021) 4P 6C