



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :07.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.396 of 2021

Pauldhinakaran

... Petitioner

-vs-

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (xiv) Department,
Fort St. George,
Chennai - 600009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tenkasi District,
Tenkasi.
- 3.The Superintendent of Prison,
Palaymkottai Central Prison,
Tirunelveli 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 of the Respondent No.2 in M.H.S.Confdl No: 01/2021 dated 12.01.2021 and quash the same and direct the respondents to produce the body or person of the detenu by name Pauldhinakaran, son of Vanaraj, aged about 31 years, now detained as "Goonda"at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner :Mr.R.Alagumani

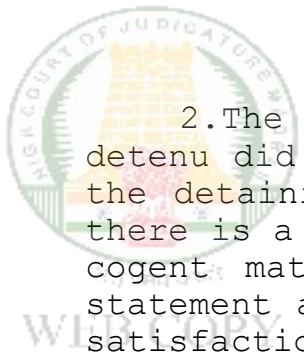
For Respondents :Mr.S.Ravi

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, Pauldhinakaran, S/o.Vanaraj, aged about 31 years, challenging the detention order in M.H.S.Confdl No:01/2021, dated 12.01.2021, passed by the second respondent, branding him as "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.



2.The learned counsel for the petitioner would state that the detenu did not file and attempted to file any bail application, but the detaining authority mentioned in the grounds of detention that there is a possibility of detenu coming out on bail, but there is no cogent materials available in the booklet relating to the said statement and the detaining authority did not record his subjective satisfaction relating to the efforts taken by the detenu and his relatives for filing bail application in the ground case. It has also been stated that the detaining authority had further observed that if the detenu comes out on bail, he would indulge in activities, which would be prejudicial to the maintenance of public order. 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 and there is an inordinate delay in considering the petitioner's representation.

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 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 16.02.2021, which was received on 17.02.2021. Remarks on the said representation were called for on 17.02.2021 and it was received on 12.03.2021. The Deputy Secretary



concerned has dealt with the representation on 12.03.2021 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 17.02.2021 and 12.03.2021, there is a delay of 22 days and after excluding 8 Government Holidays, there was a delay of 14 days in the first part and in between 12.03.2021 and 12.04.2021, there was a delay of 30 days and after excluding 14 Government Holidays, there was a delay of 16 days in the second part, in total, there was a delay of 30 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 30 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 M.H.S.Confdl No:01/2021, dated 12.01.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Pauldhinakaran, S/o.Vanaraj, aged about 31 years, who is now detained at Central Prison, Palayamkottai is directed to be released forthwith, unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mpk

Note :

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



To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (xiv) Department,
Fort St. George,
Chennai - 600009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tenkasi District,
Tenkasi.
- 3.The Superintendent of Prison,
Palaymkottai Central Prison,
Tirunelveli District.
- 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.396 of 2021
07.09.2021

GC(22.09.2021) 4P 6C