



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.410 of 2021

Kanthasamy@Kannan

... Petitioner/detenu

-vs-

1.The State of Tamilnadu
represented by the Additional Cheif Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... 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 appropriate writ or direction in the nature of a writ calling for the entire records connected with the detention order passed in H.S. (M) Confdl No.32/2021 dated 24.02.2021 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Kanthasamy @ Kannan, aged about 22 years, S/o.Muthuramalingam, now detained at the Central Prison, Palayamkottai, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner :Mr.N.Pragalathan

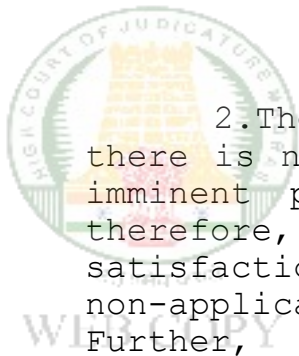
For Respondents :Mr.S.Ravi

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, Kanthasamy @ Kannan, S/o.Muthuramalingam, aged about 22 years, challenging the detention order in H.S.(M) Confdl No.32/2021 dated 24.02.2021, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.



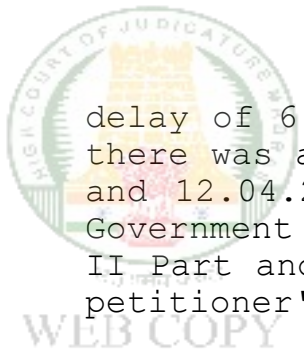
2.The learned counsel for the petitioner would state that there is no application pending in the ground case and there is no imminent possibility of coming out on bail by the detenu and therefore, there is no cogent material to arrive at a subjective satisfaction that the detenu will come out on bail, which shows the non-application of mind on the part of the detaining authority. Further, the arrest and detention order was not properly intimated to the relatives and it is against the judgment of the Honourable Apex Court. That apart, the Tamil and English version of the grounds of detention and the booklet differs and several pages in the booklet 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 to show that the activities of the detenu is prejudicial to the maintenance of public law and order to brand him as goonda 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 furnished by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent dated 09.03.2021 and it was received on 15.03.2021. Remarks were called for on 15.03.2021 and it was received on 22.03.2021. The Deputy Secretary dealt with the matter on 22.03.2021. 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 15.03.2021 and 22.03.2021, there was a



delay of 6 days, after excluding the Government Holidays of 2 days, there was a delay of 4 days in the I part and in between 22.03.2021 and 12.04.2021, there was a delay of 20 days, after excluding the Government Holidays of 9 days, there was a delay of 11 days in the II Part and totally there was a delay of 15 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 15 days in considering the representation of the petitioner remains unexplained 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 above decision of the Apex Court.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in H.S.(M) Confdl No.32/2021 dated 24.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Kanthasamy @ Kannan, S/o.Muthuramalingam, aged about 22 years, who is now detained at Central Prison, Trichy, 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)

pm

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,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 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.410 of 2021
08.09.2021

GC(27.09.2021) 4P 6C