



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P.(MD) No.430 of 2021

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... Petitioner/Brother of the Detenue

-vs-

1.State represented by,
The District Collector and District Magistrate,
Tenkasi District,
Tenkasi - 11.

2.The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai - 9.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records from the first respondent in M.H.S Confdl. No.11/2021 dated 26.02.2021 by setting aside the said order of detention passed by the first respondent and setting the detenue Mahendran, aged 22, S/o Subbaiah, at liberty now detained in the Central Prison, Palayamkottai.

For Petitioner : Mr.V.Kathirvelu
Senior Counsel for
Mr.K.Prabhu

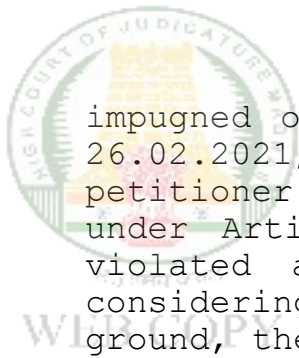
For Respondents : Mr.S.Ravi
Standing Counsel for Tamil Nadu Government

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The Habeas Corpus Petition has been filed by the brother of the detenu, namely, Mahendran, male, aged about 22 years, son of Subbaiah, who has been branded as "Goonda" by the first respondent in M.H.S Confdl. No.11/2021 dated 26.02.2021 as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2.Though several grounds have been raised challenging the
<https://hcservices.ecourts.gov.in/hcservices/>



impugned order of detention passed by the first respondent, dated 26.02.2021, Mr.V.Kathirvelu. Learned Senior Counsel for the petitioner would contend that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India has been violated and there is an inordinate and unexplained delay in considering the representation of the petitioner and on this sole ground, the detention order is liable to be set aside.

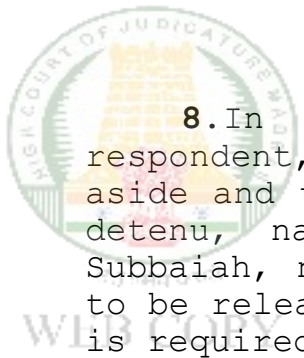
3.Per contra, Mr.S.Ravi, learned Standing Counsel appearing for the State would argue that the detaining authority, namely, the first respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the order of detention passed by the first respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

4.We have heard the rival submissions and perused the materials available on records.

5.In the instant case, it is not in dispute that the detenu was detained by the order of the first respondent dated 26.02.2021. Aggrieved over the same, a representation dated 09.03.2021 has been sent to the first respondent and the same was received on 11.03.2021 and on the same day, remarks were called for and the same was received on 22.04.2021. The Deputy Secretary dealt with the matter on 22.04.2021. The concerned Minister dealt with the matter on 27.04.2021 and thereafter, the detenu's representation was rejected on 28.04.2021. It is seen that there was delay of 41 days between 11.03.2021 and 22.04.2021. It is also seen that there are 18 Government holidays and after excluding the same, there is a delay of 23 days in considering the representation of the detenu.

6.In the case of **Rajammal vs. State of Tamil Nadu and another (1999 (1) SCC 417)** the Honourable Apex Court 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 any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

7. In the case on hand, there is absolutely no explanation for the delay of 23 days in considering the representation of the detenu. 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.



8.In fine, the order of detention passed by the first respondent, in M.H.S Confdl. No.11/2021 dated 26.02.2021 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Mahendran, male, aged about 22 years, son of Subbaiah, 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 (T&P)

// 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 District Collector and District Magistrate,
Tenkasi District,Tenkasi-11.
- 2.The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli District.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort saint George, Chennai-600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.430 of 2021
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RD(2.08.2021) 3P 6C