



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2021

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

H.C.P(MD)No.421 of 2021

K.Malar,
W/o.Krishnamoorthy,
Main Road,
Memathur & Post,
Sembanarkoil Police Station Limit,
Tharangambadi Taluk,
Mayiladuthurai District. ... Petitioner/Mother of the Detenu
vs.

- 1.The State of Tamil Nadu,
Rep. By the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Mayiladuthurai District,
Mayiladuthurai.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli. ... 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 in detention order passed in C.O.C.No.03/2021, dated 05.03.2021 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son, namely Vinoth, S/o.Krishnamoorthy, male, aged 30 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.



For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.S.Ravi
Standing counsel for Government

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

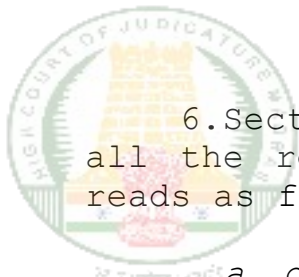
This Habeas Corpus Petition has been filed by the mother of the detenu, namely, Vinoth, son of Krishnamoorthy, aged about 30 years, against the detention order passed by the second respondent, in C.O.C.No.03/2021, dated 05.03.2021, branding him as "Boot-Legger" as contemplated under Section 2(b) of Tamil Nadu Act, 14 of 1982.

2.Mr.K.A.S.Prabhu, learned counsel appearing for the petitioner would argue that though the detenu was detained by the impugned order of the second respondent, dated 05.03.2021, the book-let and relevant papers were furnished to him only on 19.03.2021. It is the further submission of the learned counsel appearing for the petitioner that as per Section 8 of Tamil Nadu Act, 14 of 1982, there is a legal obligation of the detaining authority to serve the material papers within a period of five days.

3.It is also contended by the learned counsel appearing for the petitioner that the representation sent by the petitioner on behalf of the detenu to release, was not considered in time and 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.

4.Per contra, Mr.S.Ravi, learned Standing Counsel appearing for the respondents would argue that the detenu, in this case, has involved in two adverse cases, which are similar in nature and that the detention order was passed only to prevent him in doing so in future, which is prejudice to the maintenance of the public 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.

5.Heard Mr.K.A.S.Prabhu, learned counsel appearing for the petitioner and Mr.S.Ravi, learned Standing Counsel appearing for the State and perused the materials available on record.



6. Section 8 of Tamil Nadu Act, 14 of 1982, mandates supply of all the relevant documents within a period of five days, which reads as follows:-

"8. (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."

7. In the present case, it is not disputed that the detenu was detained by the order of the second respondent, dated 05.03.2021. A perusal of the additional typedset of papers furnished by the learned counsel for the petitioner shows that the entire relevant documents were furnished to the detenu only on 19.03.2021. Admittedly, the materials were not supplied to the detenu as per Section 8 of the Act.

8. Further, in the instant case, the proforma furnished by the learned Standing counsel would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 15.03.2021 and it was received on 17.03.2021. Remarks were called for on the same day i.e. 17.03.2021 and it was received on 12.04.2021. The Deputy Secretary dealt with the matter on 15.04.2021. The concerned Minister dealt with the matter on 19.04.2021 and the representation came to be rejected on 20.04.2021. It is seen that in between 17.03.2021 and 12.04.2021, there was a total delay of 25 days, after excluding the Government Holidays of 9 days, there is a delay of 16 days in considering the representation submitted by the petitioner on behalf of the detenu.

9. 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.

10. In the case on hand, as stated supra, the delay of 16 days in considering the representation submitted by the petitioner on



behalf of the detenu has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the ground of delay by following the decision of the Honourable Apex Court referred supra.

11. In fine, the Habeas Corpus Petition is allowed. The detention order made in C.O.C.No.03/2021, dated 05.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Vinoth, son of Krishnamoorthy, aged about 30 years, who is now detained at Central Prison, Tiruchirappalli, 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-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

ps

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 Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Mayiladuthurai District,
Mayiladuthurai.
3. The Superintendent,
Central Prison,
Tiruchirappalli.

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



4.The Joint Secretary to Government,
Public(Law and Order),
Fort.St.George,
Chennai-600 009.

WEB COPY

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**H.C.P (MD) No.421 of 2021
28.06.2021**

KM(08.07.2021) 5P 6C