



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :06.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.427 of 2021

and

Cr1.M.P(MD)No.6674 of 2021

J.Pavithra

... Petitioner/wife of the
detenue

-vs-

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

3. The Superintendent of Police,
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 calling for the entire records in detention order No:18/2021 dated 04.03.2021 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Jagadeesan S/o.Rajangam, male aged 38 years, (now detained at Central Prison, Madurai) before this Hon'ble Court and set him at liberty and thus render justice.

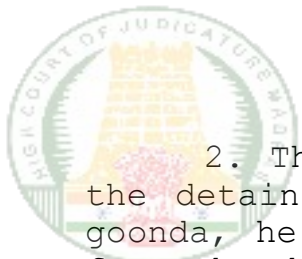
For Petitioner : Mr.Jagadesh Pandian for
Mr.NA.Manimaran

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 wife of the detenu, namely, Jagadeesan S/o.Rajangam, aged about 38 years, challenging the detention order No:18/2021 dated 04.03.2021, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.



2. The learned counsel for the petitioner would state that if the detaining authority has real intention to brand the detenu as goonda, he ought to have passed the detention order within 30 days from the date of remand in the ground case, whereas, in the present case, the detenu was arrested on 22.01.2021 and the detaining authority passed the detention after two months ie., on 04.03.2021 and there is no explanation for such delay. He would further submit that the Sponsoring Authority failed to inform about the arrest of the detenu in the ground case to his parents, family members, which is in violation of Article 22(1) of the Constitution of India and the dictum laid down by the Honourable Apex Court in D.K.Basu vs. State of West Bengal. It is further submitted that the property was produced before the NDPS Court with a delay of 23 days and there is no explanation for that. Further, it is stated that even though the petitioner is said to have been arrested in a busy area, the police recorded the confession statement and arrested the petitioner in the presence of police officials and not the independent witnesses, which would vitiate the detention order and therefore, the same is liable to be set aside.

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 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 12.03.2021. Remarks were called for on 12.03.2021 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 26.04.2021 and the representation came to be rejected on 27.04.2021. It is seen that in between 12.03.2021 and 12.04.2021, there was a delay of 30 days, after excluding the Government Holidays of 13 days, there was a delay of 17 days in the Ist part and in between 15.04.2021 and 26.04.2021, there was a delay of 10 days, after excluding the Government Holidays of 4 days, there was a delay of 6 days in the IInd Part and totally there was a delay of 23 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 23 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 No.18/2021 dated 04.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Jagadeesan, S/o.Rajangam, aged about 38 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. Consequently, connected miscellaneous petition is closed.

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 /

<https://hccservices.govtamilnadu.gov.in/hccservices>



To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Theni District,
Theni.
3. The Superintendent of Police,
Central Prison,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

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

H.C.P. (MD) No.427 of 2021
06.09.2021

RK (17.09.2021) 4P 6C