



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :21.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.439 of 2021

Poonkodi

... Petitioner/Mother of the detenu

-vs-

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamilnadu,
Fort St. George,
Chennai-600 009.
 - 2.The District Collector and District Magistrate,
Tenkasi District,
Tenkasi - 11.
 - 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- ... Respondents

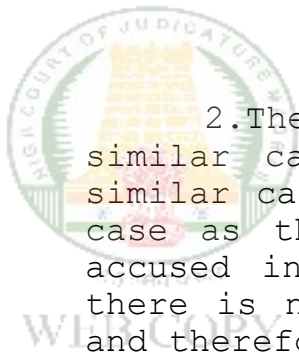
PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus or any other writ or direction calling for the entire records, connected with the detention order of the respondent No.2 in M.H.S.Confdl.No.05/2021 dated 03.02.2021 and quash the same and direct the respondents to produce the detenu by name Gopalakrishnan, son of Perumalsamy, aged about 23 years, now detained in Palayamkottai Central Prison before this Hon'ble Court and set him at liberty forthwith.

For Petitioner	:Mr.Vinoth Bharathi R
For Respondents	:Mr.S.Ravi
	Additional Public Prosecutor

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 mother of the detenu, namely, Gopalakrishnan, son of Perumalsamy, aged about 23 years, challenging the detention order in M.H.S.Confdl.No.05/2021 dated 03.02.2021, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.



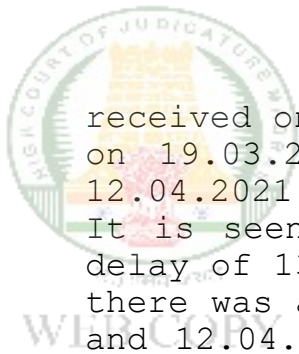
2.The learned counsel for the petitioner would state that the similar case materials were not supplied to the detenu and the similar case relied on by the detailing authority is not a similar case as the learned Judicial Magistrate has granted bail to the accused in similar case under Section 167(2) Cr.P.C., and hence, there is no imminent possibility of the detenu coming out on bail 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 was not properly intimated to the relatives and it is against the judgment of the Honourable Apex Court. That apart, several pages in the booklet are in English and the detailing authority did not supply the Tamil Version; the Tamil and English version of the grounds of detention and the booklet differs and the affidavit of the sponsoring authority was not supplied to the detenu, 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 26.02.2021 and it was received on 05.03.2021. Remarks were called for on 05.03.2021 and it was



received on 19.03.2021. The Deputy Secretary dealt with the matter on 19.03.2021. 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 05.03.2021 and 19.03.2021, there was a delay of 13 days, after excluding the Government Holidays of 4 days, there was a delay of 9 days in the I part and in between 19.03.2021 and 12.04.2021, there was a delay of 23 days, after excluding the Government Holidays of 11 days, there was a delay of 12 days in the II Part and totally there was a delay of 21 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 21 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 M.H.S.Confdl.No.05/2021, dated 03.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Gopalakrishnan, son of Perumalsamy, aged about 23 years, now detained in Palayamkottai Central Prison, Tirunelveli District 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)

sj

Note :

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



To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamilnadu,
Fort St. George,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Tenkasi District,
Tenkasi - 11.
- 3.The Superintendent of Prison,
Palayamkottai 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.439 of 2021
21.09.2021

GC (04.10.2021) 4P 6C