



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.452 of 2021

Y.Saranya

... Petitioner/Wife of the detenu

-vs-

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

2.The Commissioner of Police,
O/o. The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

3.The Superintendent of Prison,
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.No.09/Detention/C.P.O/T.C/2021, dated 02.03.2021, 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 Husband namely Yuvaraj, S/o.Mani, aged about 21 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

Additional Public Prosecutor

O R D E R

(Order of the Court was made by V. BHARATHIDASAN, J.)

This habeas corpus petition has been filed by the wife of the detenu, namely, Yuvaraj, S/o.Mani, aged about 21 years, challenging the detention order in C.No.09/Detention/C.P.O/T.C/2021, dated 02.03.2021, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.



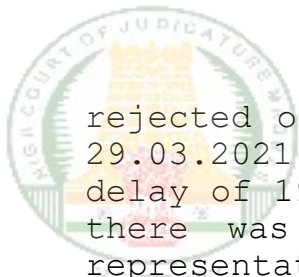
2.Mr.K.A.S.Prabhu, learned counsel appearing for the petitioner, would submit that the arrest of the detenu in ground case was not properly intimated to either the family members or the relatives of the petitioner which seriously affected the valuable right of the detenu to make effective representation for revocation of the detention order. Further, the detention order was passed against the detenu on the basis of the G.O. issued by the Government in G.O.(D).No.07, Home, Prohibition and Excise (XVI) Department, dated 11.01.2021. But, the said G.O., was not served along with the grounds of detention as well as detention order. That apart, the detenu has not filed any bail application in the ground case. However, the Detaining Authority, to arrive at the subjective satisfaction, has stated that in a similar case, bail was granted to some other person. It is the submission of the learned counsel for the petitioner that when no bail petition has been filed by the detenu in the ground case, the subjective satisfaction reached by the Detaining Authority is without any basis and there is no imminent possibility of the detenu coming out on bail by filing bail petition before the appropriate Court.

3.Mr.S.Ravi, learned Additional Public Prosecutor appearing for the State, on instructions, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention 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.

4.Heard the learned counsel appearing on either side and perused the materials available on record.

5.Even though the learned counsel for the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representation. It is submitted by the learned counsel for the petitioner 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.In the instant case, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 18.03.2021 and it was received on 22.03.2021. Remarks were called for on the same day ie., on 22.03.2021 and it was received on 29.03.2021. The Deputy Secretary dealt with the matter on 29.03.2021. 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 22.03.2021 and 29.03.2021 and in between 29.03.2021 and 12.04.2021, there was a delay of 19 days, after excluding the Government Holidays of 8 days, there was a delay of 11 days in considering the petitioner's representation.

WEB COPY

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 11 days in considering the representation of the petitioner has not been properly explained 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 decision of the Honourable Apex Court referred supra.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in C.No.09/Detention/C.P.O/T.C/2021, dated 02.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, Yuvaraj, S/o. Mani, aged about 21 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 III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

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,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The Joint Secretary to Government,
State of Tamil Nadu,
Public (Law & Order),
Fort St.George,
Chennai.

3.The Commissioner of Police,
O/o. The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli..

4.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

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

ORDER MADE IN
H.C.P. (MD) No.452 of 2021
DATED : 06.10.2021

MMS (CO)
RS/PM (09.11.2021) 4P 6C