



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.449 of 2021

Radha ... Petitioner/mother of the detenu

-vs-

1. The State of Tamil Nadu,
Rep. by Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 9.
2. The District Magistrate and District Collector,
Pudukkottai District,
Pudukkottai.
3. The Superintendent,
Central Prison,
Trichy.
4. The Inspector of Police,
Thirugokarnam Police Station,
Pudukkottai District. ... 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 records relation to the Detention Order passed by the 2nd respondent in Detention Order PDO.No.7/2021 dated 19.02.2021 and to quash the same and direct the respondents to produce the body or person of the detenu, Akash, S/o. Senbagamoorthy, aged about 23 years, before this Hon'ble Court and set him at liberty, now detained at Central Prison, Trichy.

For Petitioner	:Mr.D.Rameshkumar
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 mother of the detenu, namely, Akash, S/o. Senbagamoorthy, aged about 23 years,
<https://hcservices.ecourts.gov.in/hcservices/>



challenging the detention order in PDO.No.7/2021 dated 19.02.2021, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

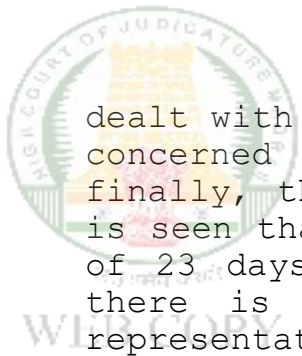
2.The learned counsel for the petitioner would state that the detenu was arrested on 28.01.2021 in the ground case and the detention order was passed on 19.02.2021 after a lapse of 20 days and there was a huge delay between the date of arrest and the order of detention. Further, after registering the ground case in Cr.No.106 of 2021, two other cases in Cr.Nos.107 and 108 of 2021 were registered against the detenu. But, the arrest with regard to the subsequent cases was not properly intimated to the family members of the accused. It is further submitted that several pages in the booklet furnished to the detenu, the copies are not legible and readable, which caused serious prejudice to the detenu from making effective representation to the higher authorities and there is also no material 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 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 produced by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner has made a representation to the 1st respondent on 19.03.2021 which was received on 23.03.2021. Remarks on the said representation were called for on 23.03.2021 and it was received on 16.04.2021. The Deputy Secretary concerned has



dealt with the representation on 16.04.2021 and the Hon'ble Minister concerned has dealt with the representation on 19.04.2021 and finally, the representation came to be rejected on 20.04.2021. It is seen that in between 23.03.2021 and 16.04.2021, there is a delay of 23 days. After excluding the government holidays of 11 days, there is a delay of 12 days in considering the petitioner's representation.

7.At this juncture, it is useful to refer to the decision of the Hon'ble Supreme Court in the case of **Rajammal vs. State of Tamil Nadu and another** reported in **1999 (1) CC 417**, wherein, the Apex Court has held that it is for the authority concerned to explain the delay, if any, in disposal of the representation of the detenu 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.

8.In the case on hand, as stated supra, the delay of 12 days in considering the representation of the petitioner remains unexplained by the respondents. Hence, in our considered view, the impugned 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 P.D.O.No.7/2021 dated 19.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Akash, S/o.Senbagamoorthy, aged about 23 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)

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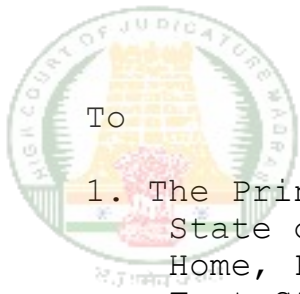
/ /2021

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 / litigant concerned.



To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department
Fort St.George,
Chennai - 9.
2. The District Magistrate and District Collector
Pudukkottai District,
Pudukkottai.
3. The Superintendent,
Central Prison.
Trichy.
4. The Joint Secretary to Government,
Public (Law &Order) Fort St.Goerge,
Chennai 600 009 .
- 5.The Inspector of Police,
Thirugokarnam Police Station,
Pudukkottai District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.449 of 2021
DATED : 08.09.2021

KMV (CO)
KB(28.09.2021) 4P 7C