



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.467 of 2021

Ganesan

... Petitioner/detenu

-vs-

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Office to the District Collector and District Magistrate,
Theni District,
Theni.
- 3.The Superintendent of Prison,
Madurai 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, connected with the detention order of the respondent No.2 in Detention Order No.11/2021, dated 04.03.2021 and quash the same and direct the respondents to produce the body or person of the detenu by name Ganesan, aged about 29 years, S/o. Chandran, now detained as 'Drug Offender' at Madurai Central Prison before this court and set him at liberty.

For Petitioner : Mr.R.Alagumani

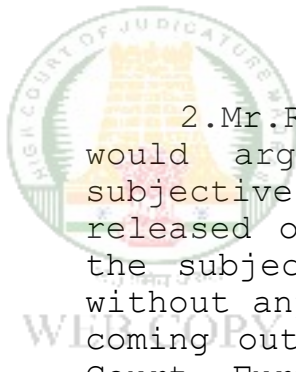
For Respondents : Mr.S.Ravi

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 detenu, namely Ganesan, S/o. Chandran, aged about 29 years, challenging the detention order No.11/2021, dated 04.03.2021, passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.



2.Mr.R.Alagumani, learned counsel appearing for the petitioner, would argue that the Detaining Authority, to arrive at the subjective satisfaction, has stated that the detenu likely to be released on bail in the ground case. He would further submit that 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. Further, there is no cogent material available in the booklet relating to the possibility of the detenu for coming out on bail. The detenu was arrested on 20.01.2021. But the Detaining Authority has passed the detention order against the detenu after 42 days ie., on 04.03.2021 and the delay for passing the detention order was not properly explained by the Detaining Authority.

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.

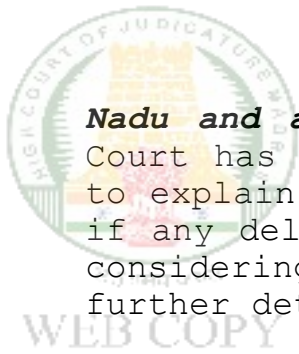
4.Heard the learned counsel appearing on either side and perused the materials available on record.

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 25.03.2021. Remarks were called for on the same day ie., on 25.03.2021 and it was received on 11.05.2021. The Deputy Secretary dealt with the matter on 12.05.2021. The concerned Minister dealt with the matter on 15.05.2021 and the representation came to be rejected on 07.06.2021. It is seen that in between 25.03.2021 and 11.05.2021, there was a delay of 46 days, after excluding the Government Holidays of 18 days, there was a delay of 28 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***

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



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 28 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 made in Detention Order No.11 of 2021, dated 04.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Ganesan, S/o.Chandran, aged about 29 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.

Sd/-

Assistant Registrar (CS I)

// 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 District Collector and District Magistrate,
Office to the District Collector and District Magistrate,
Theni District,
Theni.



3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.

4.The Joint Secretary to Government,
Public (Law & Order),
Fort Saint George,
Chennai-9.

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

H.C.P. (MD) No.467 of 2021
27.09.2021

DJ(CO)/RS (22.10.2021) 4P 6C