



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.505 of 2021

Malliga

... Petitioner/Mother of the detenu

-vs-

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

2.The Commissioner
Tirunelveli District,
Tirunelveli.

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 issue of a Writ of Habeas Corpus, calling for the records pertaining to the Detention Order No.2/BCDFG1SSSV/2021, dated 19.02.2021, passed by the second respondent and set-aside the same by setting the detenu by name A.Maharaja @ ATM Maharaja, S/o. Perumal, aged 28/2021 and set him at liberty, now detained at Central Prison, Palayamkottai, Tirunelveli.

For Petitioner : Mr.K.Sivabalan

For Respondents : Mr.S.Ravi

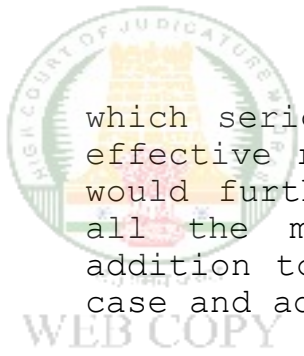
Additional Public Prosecutor

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 A.Maharaja @ ATM Maharaja, S/o. Perumal, aged about 28 years, challenging the Detention Order No.2/BCDFG1SSSV/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.Mr.K.Sivabalan, learned counsel appearing for the petitioner, would argue that the arrest of the detenu 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. He would further submit that the Sponsoring Authority has not placed all the material documents before the Detaining Authority. In addition to that, certain important documents with regard to ground case and adverse case are not furnished to the detenu.

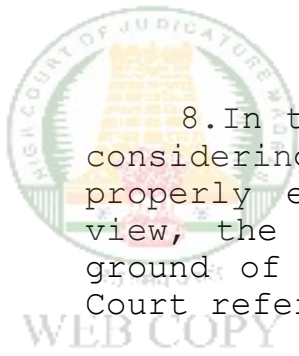
3.Mr.S.Ravi, learned Additional Public Prosecutor appearing for the State, on instructions, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. It 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 09.03.2021 and it was received on 16.03.2021. Remarks were called for on the same day ie., on 16.03.2021 and it was received on 16.03.2021. The Deputy Secretary dealt with the matter on 16.03.2021. 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 16.03.2021 and 12.04.2021, there was a delay of 14 days, after excluding the Government Holidays of 12 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 14 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 No.2/BCDFG1SSSV/2021, dated 19.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, A.Maharaja @ ATM Maharaja, S/o. Perumal, aged about 28 years, who is now detained at Central Prison , Palayamkottai, Tirunelveli, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (Records)

// 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 of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.
- 2.The Joint Secretary to Government of Tamil Nadu,
Public (Law & Order),
Fort St.George,
Chennai-9.
- 3.The Commissioner
Tirunelveli District,
Tirunelveli.
- 4.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.



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

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ORDER MADE IN
H.C.P. (MD) No.505 of 2021
DATED : 27.09.2021

ES (CO)/RS (18.10.2021) 4P 6C