



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.08.2021

CORAM:

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

H.C.P. (MD) No.542 of 2021

Muthu Esakki ... Petitioner/Wife of the detenu

-vs-

- 1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector & District Magistrate,
Office of the District Collector & District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Police,
Central Prison,
Palayamkottai,
Tirunelveli-2.

... 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 pertaining to the detention order passed by the second respondent vide his proceedings in H.S.(M).Confdl.No.87/2020 dated 10.10.2020 and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Esakkikumar @ Kumar, Son of Velu, aged about 49 years, who is detained in Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner :Mr.V.Sorimuthu

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 wife of the detenu, Esakkikumar @ Kumar, Son of Velu, aged about 49 years, challenging the detention order in H.S.(M).Confdl.No.87/2020 dated 10.10.2020 passed by the second respondent, branding him as



"Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

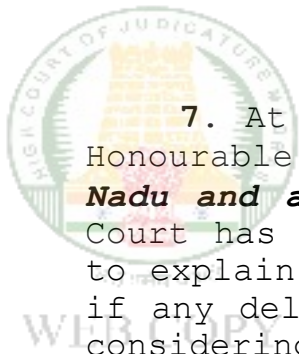
2.The learned counsel for the petitioner would state that the ground case mentioned by the detaining authority is registered on 20.05.2020, but as per Page Nos.625 to 637, confession statement of the accused were obtained on 18.09.2020 at about 15.00 p.m., which clearly shows that the ground case itself is false and that the detaining authority without applying mind, has passed the detention order. It is further submitted that the ground case can be dealt with under ordinary law and there is no necessity to invoke the preventive detention against the detenu.

3.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. Thus, he would pray to quash the impugned order of detention.

4.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 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.

5. Heard the learned counsel for the petitioner as well as the respondents.

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 Nil and it was received on 21.11.2020. Remarks were called for on 21.11.2020 and it was received on 14.12.2020. The Deputy Secretary dealt with the matter on 14.12.2020.The concerned Minister dealt with the matter on 09.01.2021 and the representation came to be rejected on 11.01.2021. It is seen that in between 21.11.2020 and 14.12.2020, there was a delay of 22 days, after excluding the Government Holidays of 5 days, there was a delay of 17 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 17 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 H.S.(M).Confdl.No.87/2020 dated 10.10.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Esakkikumar @ Kumar, Son of Velu, aged about 49 years, who is now detained at Central Prison, Palayamkottai, 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)

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

2.The District Collector & District Magistrate,
Office of the District Collector & District Magistrate,
Thoothukudi District,
Thoothukudi.

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



3.The Superintendent of Police,
Central Prison,
Palayamkottai,
Tirunelveli - 2.

4.The Joint Secretary to Government,
Public (Law & Order),
Fort St. George,
Chennai - 600 009.

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

H.C.P. (MD) No.542 of 2021
17.08.2021

MGJ(27.08.2021) 4P 6C