



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2021

CORAM:

**THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
H.C.P. (MD)No.529 of 2021**

Amala ... Petitioner/ Wife of Detenu

Vs.

- 1.The State of Tamil Nadu
represented by its Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Fort St.George,
Chennai-60 009.
- 2.The District Collector/District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Police,
Central prison,
Trichy. ... Respondents

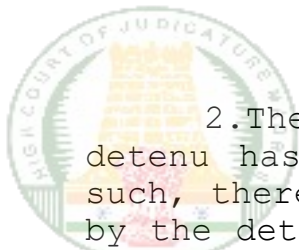
PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the records relating to the detention order passed by the second respondent in M.H.S.Confdl.No.20/2021 dated 13.03.2021 and quash the same and direct the respondents to produce the detainee Thiru.Perumal son of Sivanu, Male aged 37, who is detained at Central Prison, Trichy before this Court and set him at liberty.

For Petitioner	:	Mr.S.Selvakumar
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 wife of the detenu, namely, Perumal, S/o. Sivanu, aged about 37 years, challenging the detention order in H.S.(M)Confdl.No.20/2021 dated 13.03.2021, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.



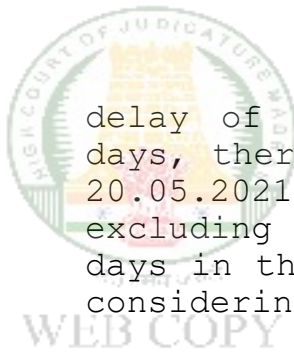
2.The learned counsel for the petitioner would state that the detenu has not filed any bail application in the ground case, as such, there is no imminent or real possibility of coming out on bail by the detenu, whereas, stating that there is a real possibility of coming out on bail by the detenu, the impugned detention order has been passed which reflects non-application of mind on the part of the detaining authority. The detaining authority pre-judged the future activities of the detenu that if he comes out on bail, the detenu will indulge in such future activities, which will be prejudicial to the maintenance of public order. But there is no corresponding cogent materials in the booklet relating to the said statement in the booklet. The delay in supplying connected papers with illegible documents has curtailed the rights of detenu in making an effective representation before the concerned authority and there is an inordinate delay in considering the petitioner's representation.

3.The learned Additional Public Prosecutor 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 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 26.03.2021 and it was received on 26.03.2021. Remarks were called for on 26.03.2021 and it was received on 18.05.2021. The Deputy Secretary dealt with the matter on 18.05.2021. The concerned Minister dealt with the matter on 20.05.2021 and the representation came to be rejected on 08.06.2021. It is seen that in between 26.03.2021 and 18.05.2021, there was a



delay of 52 days, after excluding the Government Holidays of 25 days, there was a delay of 27 days in the first part and in between 20.05.2021 and 07.06.2021, there was a delay of 16 days, after excluding the Government Holidays of 6 days, there was a delay of 10 days in the second part and totally there was a delay of 37 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 37 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.20/2021 dated 13.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Perumal, son of Sivanu, aged about 37, who is now detained at Central Prison, Trichy, 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-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mpk

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,
State of Tamil Nadu,
Home Prohibition and Excise Department,
Fort St.George,
Chennai-60 009.

2.The District Collector/District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Police,
Central prison,
Trichy.

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

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

H.C.P. (MD) No.529 of 2021
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PS (CO)

KB(20.10.2021) 4P 6C