



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2021

CORAM:

**THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
and**

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
H.C.P. (MD) No.539 of 2021**

WEB COPY

Suresh

... Petitioner/ Father of Detenu

vs.

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

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

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 entire records, connected with the detention order of the respondent no.2 in H.S.(M)Confdl.No.33/2021, dated 02.03.2021 and quash the same and direct the respondents to produce the detenu by name Sabarimani, son of Suresh, aged about 21 years, now detained in Palayamkottai Central Prison, before this court and set him at liberty forthwith.

For Petitioner : Mr.R.Vinoth Bharathi
For Respondents : Mr.A.Thiruvadikumar
Standing counsel for 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 father of the detenu, namely, Sabarimani, son of Suresh, aged about 21 years, against the detention order passed by the second respondent in H.S.(M)Confdl.No.33/2021 dated 02.03.2021, branding him as 'Goonda' as contemplated under Section 2(f) of the Tamil Nadu Act, 14 of 1982.



2. Mr.R.Vinoth Bharathi, learned counsel appearing for the petitioner, would argue that the Detaining Authority has expressed his subjective satisfaction regarding the remand of the detenu that he was produced before the Judicial Magistrate No.II, Kovilpatti, on 07.02.2021 and remanded to judicial custody up to 19.02.2021. But, there is no remand order available in the booklet. He would further submit that the detenu was arrested on 06.02.2021, but the detention order came to be passed only with the delay of 24 days i.e., on 02.03.2021. According to the learned counsel, there is no live link between the alleged prejudicial activities of the petitioner and the order of detention. In addition to that, the arrest of the detenu relating to the ground case and adverse cases was not properly intimated to either the family members or the relatives of the petitioner. 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.

3. Mr.A.Thiruvadikumar, learned Standing counsel appearing for the respondents, 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. In the instant case, the proforma furnished by the learned Standing counsel would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 16.03.2021 and it was received on 22.03.2021. Remarks were called for on 22.03.2021 and it was received on 29.03.2021. The Deputy Secretary dealt with the matter on 29.03.2021. 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 29.03.2021 and 12.04.2021, there was a delay of 7 days, after excluding the Government Holidays of 6 days, in considering the petitioner's representation.

6. 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.

7. In the case on hand, as stated supra, the delay of 7 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.

8. In fine, the Habeas Corpus Petition is allowed. The detention order made in Detention Order H.S.(M)Confdl.No.33/2021, dated 02.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Sabarimani, S/o.Suresh, aged about 21 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 (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gbg/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 the Government
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

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



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.539 of 2021
13.09.2021

DJ(CO)
KB(21.09.2021) 4P 6C