



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2021

CORAM:

**THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
H.C.P.(MD) No.548 of 2021**

Selvakumar ... Petitioner/ Detenu
vs.

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (xiv) Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Thenkasi District,
Thenkasi - 11.
- 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 M.H.S.Confdl No.19 of 2021 dated 20.03.2021 and quash the same and direct the respondents to produce the body or person of the detenu by name Selvakumar, son of Pavunraj, aged about 23 years, now detained as "Goonda" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

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 Selvakumar, Son of Pavunraj, aged about 23 years, challenging the detention order in M.H.S.Confdl No.19/2021 dated 20.03.2021, passed by the second respondent, branding him as



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

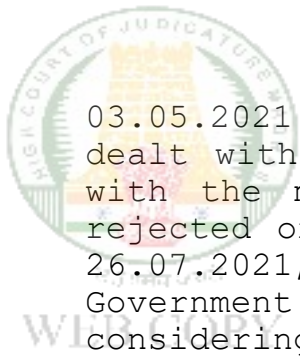
2.The learned counsel for the petitioner would state that there is no bail application pending in the ground case, at the time of passing the detention order, as such, there is no imminent or real possibility of coming out on bail by the detenu, whereas, stating that there is real possibility of coming 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. It is further submitted that the detenu was arrested on 06.03.2021, the detaining authority hurriedly passed the detention order against the detenu within 14 days i.e. on 20.03.2021 and his remand period expired on 19.03.2021. It is also submitted that the bail order mentioned by the detaining authority is not a connected case and there is no possibility of coming out on bail by the detenu. It is further submitted that in the typed set of grounds furnished to the detenu, the copies are not at all legible and readable and therefore, the detenu could not make effective representation.

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 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 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 the learned Additional Public Prosecutor for the respondents.

6. Perusal of the proforma furnished by the learned Additional Public Prosecutor appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent dated 27.03.2021 and it was received on 03.05.2021. Remarks were called for on



03.05.2021 and it was received on 19.05.2021. The Deputy Secretary dealt with the matter on 19.05.2021. The concerned Minister dealt with the matter on 20.05.2021 and the representation came to be rejected on 26.07.2021. It is seen that in between 20.05.2021 and 26.07.2021, there was a delay of 66 days, after excluding the Government Holidays of 21 days, there was a delay of 45 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 45 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 M.H.S.Confdl No.19/2021 dated 20.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Selvakumar, son of Pavunraj, aged about 23 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 (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rm/gbg

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

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- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
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.548 of 2021
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DJ(CO)
KB(06.10.2021) 4P 6C