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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.665 of 2021

V.Chinnakali ... Petitioner/mother of the detenu

-vs-

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Office of the Tiruchirappalli City Police,
Tiruchirappalli City.

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, calling for the entire records connected with the detention order of the second respondent in C.No.28/D.O/C.P.O/T.C/2020 dated 22.10.2020 and quash the same and direct the respondents to produce the body or person of the detenu by name Andhai @ Vinothkumar, Son of Vijay, aged about 20 years, now detained at Central Prison, Trichirappalli and set him at liberty.

For Petitioner : K.Arujun

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 mother of the detenu, namely, Andhai @ Vinothkumar, Son of Vijay, aged about 20 years, challenging the detention order in C.No.28/D.O/C.P.O/T.C/2020 dated 22.10.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2 (f) of Tamil Nadu Act 14 of 1982.

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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, 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 grounds of detention order differs in Tamil and English version, which shows that the detaining authority has mechanically passed the detention order without getting any clarification from the Sponsoring Authority. It is also submitted that the bail order relied on by the detaining authority differs from the ground case, which shows non-application of mind by the detaining authority.

3. It is submitted that even though the ground case was registered against several persons, the detention order was passed against the detenu alone and there is no explanation for the pick and choose and further, the detenu was arrested on 31.08.2020 and the detention order was passed on 22.10.2020 with a delay of 52 days, but the reason for the delay in passing the detention order is not explained by the detaining authority. It is further submitted that several pages in the booklet are in English and are illegible and even after requisition, translated version was not supplied. Therefore, the detenu is not able to prefer effective representation. Further, the arrest and place of detention order was not intimated properly to the detenu's relatives and the detaining authority did not follow the principles laid down by the Honourable Supreme Court in D.K.Basu vs. State of West Bengal and A.K.Roy case, which would vitiate the detention order.

4. 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.

5.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 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.

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

7. Perusal of the proforma produced by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner has made a representation to the 1st respondent on 15.02.2021 which was received on 17.02.2021. Remarks on the said representation were called for on 17.02.2021 and it was received on 18.02.2021. The Deputy Secretary concerned has dealt with the representation on 18.02.2021 and the Hon'ble Minister concerned has dealt with the representation on 27.02.2021 and finally, the representation came to be rejected on 27.02.2021. It is seen that in between 18.02.2021 and 27.02.2021, there is a delay of 8 days. After excluding the government holidays of 2 days, there is a delay of 6 days in in considering the petitioner's representation.

8.At this juncture, it is useful to refer to the decision of the Hon'ble Supreme Court in the case of **Rajammal vs. State of Tamil Nadu and another** reported in **1999 (1) CC 417**, wherein, the Apex Court has held that it is for the authority concerned to explain the delay, if any, in disposal of the representation of the detenu and if any delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

9.In the case on hand, as stated supra, the delay of 6 days in considering the representation of the petitioner remains unexplained by the respondents. Hence, in our considered view, the impugned detention order is liable to be set aside solely on the ground of delay by following the above decision of the Apex Court.

10. In fine, the Habeas Corpus Petition is allowed. The detention order in C.No.28/D.O/C.P.O/T.C/2020 dated 22.10.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, namely, Andhai @ Vinothkumar, Son of Vijay, aged about 20 years, who is now detained at Central Prison, Trichirappalli, 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)

pm

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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 Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Office of the Tiruchirappalli City Police,
Tiruchirappalli City.

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

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

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

ORDER MADE IN
H.C.P.(MD) No.665 of 2021
DATED : 17.08.2021

_RD(31.08.2021) 4P 6C

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