



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.641 of 2021

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Surya

... Petitioner/Sister of the detenu

-vs-

1. The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department IX,
Secretariat,
George Fort,
Chennai-600 009.
 2. The District Collector and District Magistrate,
Theni District,
Theni.
 3. The Superintendent of Prison,
Madurai Central Prison,
Madurai.
- ... 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 records on the file of the second respondent in Detention Order No.77/2020 and set-aside the order of detention passed therein dated 03.12.2020 direct the respondents to produce the detenu by name Saiprasath, S/o. Nagayathevar, aged about 40 years, before this court, now detained at Central Prison, Madurai, and set him at liberty.

For Petitioner : Mr.J.William Christopher
For Respondents : Mr.S.Ravi
Additional Public Prosecutor

O R D E R

(Order of the Court was made by V. BHARATHIDASAN, J.)

This habeas corpus petition has been filed by the sister of the detenu, namely, Saiprasath, S/o. Nagayathevar, aged about 40 years, challenging the Detention Order in No.77/2020, dated 03.12.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14



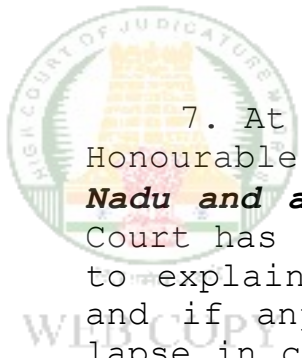
2. Mr.J.William Christopher, learned counsel appearing for the petitioner, would submit that the detenu has not filed any bail petition in the ground case and in order to substantiate his contention, no document has been furnished by the Detaining Authority. He would further submit that the Detaining Authority has not placed the relevant materials regarding the confinement of the detenu in the Central Prison, Madurai and the non-furnishing of the affidavit filed by the sponsoring authority before the Detaining Authority and other material particulars relied on by the Detaining Authority is not a mere failure, but a serious lapse on the part of the officials.

3. Mr.S.Ravi, learned Additional Public Prosecutor appearing for the State, 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. 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.

6. In the instant case, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 19.04.2021 and it was received on 21.04.2021. Remarks were called for on the same day ie., on 21.04.2021 and it was received on 18.08.2021. The Deputy Secretary dealt with the matter on 18.08.2021. The concerned Minister dealt with the matter on 30.09.2021 and the representation came to be rejected on 30.09.2021. It is seen that in between 21.04.2021 and 18.08.2021, there was a delay of 118 days, after excluding the Government Holidays of 36 days, there was a delay of 82 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 82 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.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in No.77/2020, dated 03.12.2020, passed by the second respondent, is set aside. Consequently, the detenu, Saiprasath, S/o. Nagayathevar, aged about 40 years, who is now detained at Central Prison, Madurai, 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-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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



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

3. The Superintendent of Prison,
Madurai Central Prison,
Madurai.

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

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

H.C.P. (MD) No.641 of 2021

DATED : 06.10.2021

RK/UV (09/11/2021) 4P 6C