



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :04.10.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MR.JUSTICE R. PONGIAPPAN

H.C.P. (MD) No.652 of 2021

Magesh

... Petitioner/Detenu

-vs-

1. State of Tamil Nadu
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.
 2. The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.
 3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- ... 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 P.D.No.15 of 2021 dated 26.03.2021 and quash the same and direct the respondents to produce the person or body of the detenu by name Magesh, S/o.Kumar, aged about 25 years, now detained in Palayamkottai Central Prison before this court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.S.Ravi

Additional Public Prosecutor



O R D E R

(Order of the Court was made by R.PONGIAPPAN, J.)

This habeas corpus petition has been filed by the detenu namely, Magesh, S/o.Kumar, aged about 25 years, challenging the detention order in P.D.No.15 of 2021 dated 26.03.2021 passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Mr.N.Pragalathan, learned counsel for the petitioner, would argue that even though 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.Ravi, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, 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 both sides and perused the materials available on record.

5. In the instant case, the proforma has been furnished by the learned Additional Public Prosecutor. The proforma would indicate that as against the impugned detention order, the petitioner has made a representation to the 1st respondent on 19.04.2021 which was received on 23.04.2021. Remarks on the said representation were called for on 23.04.2021 and it was received on 11.06.2021. The Deputy Secretary concerned has dealt with the representation on 11.06.2021 and the Hon'ble Minister concerned has dealt with the representation on 14.06.2021 and finally, the representation came to be rejected on 15.07.2021. It is seen that in between 23.04.2021 and 11.06.2021, there is a delay of 48 days. After excluding the government holidays of 15 days, there is a delay of 33 days in considering the petitioner's representation.

6. 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.

7. In the case on hand, as stated supra, the delay of 33 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 in P.D.No.15 of 2021 dated 26.03.2021 passed by the second respondent, is set aside. Consequently, the detenu, Magesh, S/o.Kumar, aged about 25 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 (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cm/csm

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 Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.
2. The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

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



3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
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.652 of 2021

DATED : 04.10.2021

MGJ(21.10.2021) 4P 6C