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H.C.P(MD)No.704 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

H.C.P.(MD)No.704 of 2021

K.Divya

... Petitioner / Wife of the detenu

-vs-

- 1.State of Tamil Nadu, rep. by its
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Trichy District,
Trichy.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents.

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, or any order or direction or to issue a Writ in the nature of Habeas Corpus, calling for the records relating to the impugned order of detention made in Cr.M.P.No.18/2021, dated 30.03.2021 on the file of the second respondent herein, and quash the same and direct the respondents to produce the body of the person and detenu namely Karthik, S/o.Selvam, aged 26 years(now detained at Central Prison, Trichy) before this Honourable Court and set him at liberty.

For Petitioner : Mr.N.Anandakumar

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 wife of the detenu, namely, Karthik, S/o.Selvam, aged 26 years, challenging the detention order in Cr.M.P.No.18/2021, dated 30.03.2021, passed

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



by the second respondent, branding him as "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Even though the petitioner has raised several 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.

3. Mr. S. Ravi, 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 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. Thus, he would pray for dismissal of this petition.

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

5. 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 20.04.2021 and it was received on 23.04.2021. Remarks were called for on 23.04.2021 and it was received on 12.05.2021. The Deputy Secretary dealt with the matter on 12.05.2021. The concerned Minister dealt with the matter on 15.05.2021 and the representation came to be rejected on 07.06.2021. It is seen that in between 23.04.2021 and 12.05.2021, there was a delay of 18 days, after excluding the Government Holidays of 6 days, there was a delay of 12 days in I part and in between 15.05.2021 and 07.06.2021, there was a delay of 22 days and after excluding the Government Holidays of 7 days, there was a delay of 15 days in II Part and in total, there was a delay of 27 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 27 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.

8. In fine, the Habeas Corpus Petition is allowed. The detention order in Cr.M.P.No.18/2021, dated 30.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Karthik, S/o.Selvam, aged 26 years, who is now detained at Central Prison, Tiruchirappalli, 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)

Pm

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,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Magistrate and District Collector,
Trichy District, Trichy.
3. The Superintendent,
Central Prison,
Tiruchirappalli.



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.704 of 2021
21.10.2021

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