



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.701 of 2021

Padmavathi

...Petitioner/mother of the detenu

-vs-

1. The Additional Cheif Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George,
Chennai-600 009.
2. The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
3. The Inspector of Police,
Thiruppanandal Police Station,
Thanjavur District.
4. The Superintendent of Prison,
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, or any other order or direction in the nature of Writ, call for the records pertaining to the order of detention passed by the second respondent in his proceedings P.D.No.16/2021 dated 22.02.2021 and quash the same as illegal and produce the detenu namely Karalmarx, S/o.Somasundaram, aged 30 years, now he is confined in Central Prison, Trichy before this Hon'ble Court and set him at liberty and thus render Justice.

For Petitioner :Mr.T.Lenin Kumar

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.)

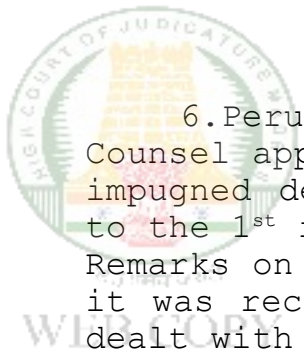
This habeas corpus petition has been filed by the mother of the detenu, namely, Karalmax, S/o.Somasundaram, aged about 30 years, challenging the detention order in P.D.No.16/2021 dated 22.02.2021, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2.The learned counsel for the petitioner would state that the detaining authority stated that since in a similar case, an accused by name Ponraj was released on bail, there is possibility of coming out on bail by the detenu. However, the similar case pertains to the year 2013 and also registered under Section 307 of I.P.C., whereas the ground case registered against the detenu is under Section 302 I.P.C., and there is no cogent material to arrive at a subjective satisfaction that the detenu will come out on bail, which shows the non-application of mind on the part of the detaining authority. It is further submitted that the arrest of the detenu was not intimated properly to the relatives of the detenu and was intimated through SMS only. That apart, there was a huge delay between the date of arrest and the order of detention and in the meantime, there is disturbance of public order and there is also no material to show that the activities of the detenu is prejudicial to the maintenance of public law and order to brand him as goonda and further, there is a delay in considering the petitioner's representation.

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

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

5.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.



6.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 29.04.2021 which was received on 03.05.2021. Remarks on the said representation were called for on 03.05.2021 and it was received on 22.06.2021. The Deputy Secretary concerned has dealt with the representation on 22.06.2021 and the Hon'ble Minister concerned has dealt with the representation on 09.08.2021 and finally, the representation came to be rejected on 09.08.2021. It is seen that in between 03.05.2021 and 22.06.2021, there is a delay of 43 days. After excluding the government holidays of 13 days, there is a delay of 30 days in considering the petitioner's representation.

7.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.

8.In the case on hand, as stated supra, the delay of 30 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.

9.In fine, the Habeas Corpus Petition is allowed. The detention order in P.D.No.16/2021 dated 22.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Karalmarx, S/o.Somasundaram, aged about 30 years, who is now detained at Central Prison, Trichy 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 II)

// 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 Cheif Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
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Chennai-600 009.
2. The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
3. The Inspector of Police,
Thiruppanandal Police Station,
Thanjavur District.
4. The Superintendent of Prison,
Central Prison,
Trichy.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort St. George,
Chennai - 600 009.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P.(MD) No.701 of 2021
DATED : 08.09.2021

MGJ(28.09.2021) 4P 7C