



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2021

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

H.C.P. (MD) No.744 of 2021

Valarmathi

... Petitioner /
Sister of the Detenu

Vs.

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

... Respondents

PRAYER: Habeas Corpus Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the entire records in detention order passed in Cr.M.P.No.20/2021 dated 21.04.2021 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's brother, namely, Alagumani, Son of Raju, aged 38 years, who is detained in Central Prison, Thiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.G.Karuppasamy Pandian

For Respondents : Mr.S.Ravi

Additional Public Prosecutor

**O R D E R****S.VAIDYANATHAN, J.****And****DR.G.JAYACHANDRAN, J.**

This Habeas Corpus Petition has been filed by the sister of the detenu, challenging the detention order passed in Cr.M.P.No.20 of 2021, dated 21.04.2021, by the 2nd respondent, branding the detenu as "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Perusal of the detention shows that the detainee, Alagumani, Son of Raju, aged 38 years has the following adverse cases:

SL.N o.	Crime No.	Police Station	Offence
01.	164/2019	Musiri Police Station	147, 294(b), 323, 506(ii) IPC and 4 of TNPHW Act,2002
02.	58/2020	Musiri Police Station	294(b), 323 and 506(ii) IPC.
03.	67/2021	Musiri Police Station	294(b), 427, 323, 506(i) IPC.

Hence, the detainee was detained on 21.04.2021.

3. The learned Additional Public Prosecutor would submit that the petitioner acted in a prejudicial manner to public order and public peace and after arriving at subjective satisfaction, the order of detention was passed preventing him from further prejudicial activities in terms of Act 14 of 1982. He would further submit that the contention that there was no possibility of the accused coming out on bail is incorrect as the detaining authority had considered that there was likelihood of the detenu moving application for bail before the Court of Sessions and there was likelihood that the detenu would be granted bail. After arriving at a subjective satisfaction the detaining authority has passed a detailed order.

4. 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.



5. Mr.S.Ravi, 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.

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

7. In the ground case, for the offence under Section 302 IPC., the detenu was arrested on 22.02.2021. Since then he is in prison. Thereafter, on considering the adverse nature of the contact of the detenu, the detention order has been passed by the Detaining Authority on 21.04.2021 against which the petitioner has made a representation to the first respondent on 10.05.2021 which was received on 17.05.2021. Remarks were called for on the very same date and the remarks were received on 08.06.2021. The Deputy Secretary dealt with the matter on 08.06.2021. The concerned Minister dealt with the matter on 26.07.2021 and the representation came to be rejected on 26.07.2021. It is seen that in between 08.06.2021 and 26.07.2021, there was a delay of 48 days, after excluding the Government Holidays of 14 days, there was a delay of 34 days in considering the petitioner's representation.

8. 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 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 34 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.

10. In fine, the Habeas Corpus Petition is allowed. The detention order passed in Cr.M.P.No.20 of 2021, dated 21.04.2021, by the 2nd respondent, is set aside. Consequently, the detenu viz., Alagumani, S/o. Raju, aged about 38 years, who is now detained in 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-I)

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// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PJL

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 (XVI),
Fort St.George,
Chennai-600 009.
2. The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Thiruchirappalli District,
Thiruchirappalli.
3. The Superintendent,
Central Prison,
Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law &Order) Fort St.Goerge, Chennai 600 009
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.744 of 2021
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TP (CO)

KB(12.01.2022) 4P 6C