



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2021

CORAM:

**THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
H.C.P.(MD) No. 760 of 2021**

Sermadurai ... Petitioner/ Detenu
vs.

1.State of Tamil Nadu,
Represented by the Additional
Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

... 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 passed in No.23/BCDFGISSSV/ 2021, dated 16.04.2021 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Sermadurai, aged about 27 years, S/o.Kumaresan, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner :Mr.N.Pragalathan
For Respondents :Mr.S.Ravi
Addl. 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 detenu, namely, Sermadurai, Son of Kumaresan, aged about 27 years, challenging the detention order in No.23/BCDFGISSSV/2021, dated 16.04.2021, passed 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 08.05.2021 and it was received on 17.05.2021. Remarks were called for on the same day i.e., on 17.05.2021 and it was received on 01.06.2021. The Deputy Secretary dealt with the matter on 02.06.2021. The concerned Minister dealt with the matter on 02.06.2021 and the representation came to be rejected on 26.07.2021. It is seen that in between 17.05.2021 and 01.06.2021, there was a delay of 14 days, after excluding the Government Holidays of 6 days, there was a delay of 8 days in the first part and in between 02.06.2021 and 26.07.2021, there was a delay of 53 days and after excluding 17 Government Holidays, there was a delay of 36 days in second part, in total there was a delay of 44 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 44 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 No.23/BCDFGISSSV/2021, dated 16.04.2021, passed by the second respondent, is set aside. Consequently, the detenu, Sermadurai, Son of Kumaresan, aged about 27 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 (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

pm

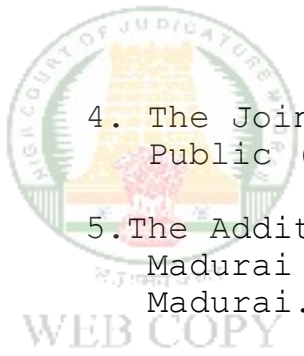
Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai - 600 009.

2. The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.



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.760 of 2021
02.11.2021

PS (CO)
KB (29.11.2021) 4P 6C