



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.09.2021

CORAM:

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

H.C.P. (MD) No.779 of 2021

Lakshmi ... Petitioner/Grandmother of the detenu

-vs-

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 Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
3. The Superintendent of Prison,
Palayamkottai Central Prison,
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 of the respondent No.2 in M.H.S.Confdl. No.30 of 2021, dated 24.03.2021 and quash the same and direct the respondents to produce the detenu by name Raja @ Esakkiraja @ Coastrider Raja, S/o. Esakkipandi, aged about 20 years, now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

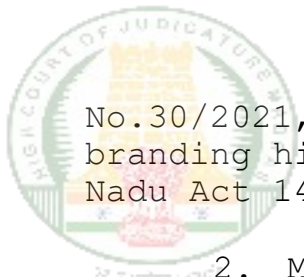
For Petitioner : Mr.R.Vinoth Bharathi

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

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 grandmother of the detenu, namely, Raja alias Esakkiraja, S/o. Esakkipandi, aged about 20 years, challenging the detention order in M.H.S.Confdl.



No.30/2021, dated 24.03.2021, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Mr.R.Vinoth Bharathi, learned counsel appearing for the petitioner, would submit that the arrest of the detenu was not properly intimated to either the family members or the relatives of the petitioner which seriously affected the valuable right of the detenu to make effective representation for revocation of the detention order. He would further submit that the detenu was arrested on 09.03.2021, but the Detaining Authority has passed the detention order on 24.03.2021. According to the learned counsel, there is no live link between the date of alleged occurrence and the date of detention and the delay for passing the detention order was not properly explained by the Detaining Authority.

3. Mr.S.Ravi, learned Additional Public Prosecutor appearing for the State, on instructions, 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 the learned counsel appearing on either side and perused the materials available on record.

5. Even though the learned counsel for 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.

6. In the instant case, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 08.04.2021 and it was received on 15.04.2021. Remarks were called for on the same day ie., on 15.04.2021 and it was received on 10.05.2021. The Deputy Secretary dealt with the matter on 11.05.2021. 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 15.04.2021 and 10.05.2021, there was a delay of 24 days, after excluding the Government Holidays of 9 days, there was a delay of 13 days in considering the petitioner's representation and in between 15.05.2021 and 07.06.2021, there was a delay of 22 days, after



excluding the Government Holidays of 7 days, there was a delay of 15 days in considering the petitioner's representation.

7. 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.

8. In the case on hand, as stated supra, the delay of 28 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.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in M.H.S.Confdl No.30/2021, dated 24.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Raja alias Esakkiraja, S/o. Esakkipandi, aged about 20 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 (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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.

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



2. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

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

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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NSN (CO)
KB(12.10.2021) 4P 5C