



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :14.09.2021

CORAM:

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

H.C.P. (MD) No.776 of 2021

Arunachalam

... Petitioner/father of the detenu

-vs-

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamilnadu,
Fort St. George,
Chennai-600 009.
2. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli-9
3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District,Tirunelveli.

...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 writ or direction calling for the entire records, connected with the detention order of the respondent no.2 in M.H.S.Confdl.No.15/2021 dated 09.03.2021 and quash the same and direct the respondents to produce the detenu by name Murugan, aged about 21 years, now detained in Central Prison, Palayamkottai before this Hon'ble Court and set him at liberty forthwith.

For Petitioner :Mr.R.Vinoth Bharathi

For Respondents :Mr.A.Thiruvadikumar
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 father of the detenu, namely, Murugan, aged about 21 years, challenging the detention order in M.H.S.Confdl.No.15/2021 dated 09.03.2021, passed



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

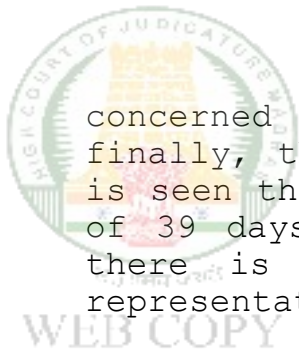
2.The learned counsel for the petitioner would state that the arrest of the detenu was not properly intimated to his family members and no records are available in the booklet to show that the arrest intimation was sent through registered post, which is in violation of the principles laid down by the Honourable Apex Court in D.K.Basu vs. West Bengal. It is further submitted that several pages in the Booklet are in English and Tamil Version of the said pages was not supplied and further, the Tamil and English version of the booklet and grounds differs, which caused serious prejudice to the detenu from making effective representation to the higher authorities. It is also submitted that the detenu was arrested on 25.02.2021, but the detaining authority passed the detention order on 09.03.2021 and there is no live link between the date of alleged occurrence and date of detention and the delay of 12 days in passing the detention order has not been properly explained by the detaining authority and further, there is a delay in considering the 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 15.05.2021 which was received on 24.05.2021. Remarks on the said representation were called for on 24.05.2021 and it was received on 25.06.2021. The Deputy Secretary concerned has dealt with the representation on 28.06.2021 and the Hon'ble Minister



concerned has dealt with the representation on 30.06.2021 and finally, the representation came to be rejected on 09.08.2021. It is seen that in between 30.06.2021 and 09.08.2021, there is a delay of 39 days. After excluding the government holidays of 13 days, there is a delay of 26 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 26 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 M.H.S.Confdl.No.15/2021 dated 09.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Murugan, aged about 21 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 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 Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamilnadu,
Fort St. George,
Chennai-600 009.
2. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli-9
3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District,
Tirunelveli.
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.776 of 2021
DATED : 14.09.2021

MGJ(28.09.2021) 4P 6C