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H.C.P.(MD) No.801 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P. (MD) No.801 of 2021

Guruvammal

... Petitioner/ Wife of the Detenu

vs.

1. State of Tamil Nadu

Represented by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

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

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

... 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 H.S.(M) Confdl No.63/2021 dated 29.04.2021 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 the petitioner's husband i.e., Essaki Muthu, aged about 45 years, S/o.Thangavel Assari, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.J.Joseph Zinoson

For Respondents : Mr.S.Ravi

Additional 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 wife of the detenu, namely, Essaki Muthu, S/o.Thangavel Assari, aged about 45 years, against the detention order passed by the second respondent, in H.S.(M) Confdl No.63/2021, dated 29.04.2021, 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 appearing 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.

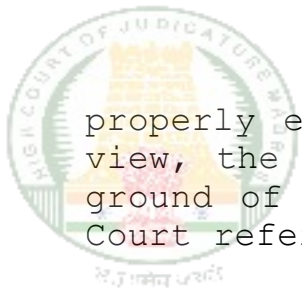
3. Mr.S.Ravi, learned Additional Public Prosecutor appearing for the respondents, on instructions, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. 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. 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 17.05.2021 and it was received on 21.05.2021. Remarks were called for on 24.05.2021 and it was received on 15.06.2021. The Deputy Secretary dealt with the matter on 16.06.2021. The concerned Minister dealt with the matter on 16.07.2021 and the representation came to be rejected on 26.07.2021. It is seen that in between 24.05.2021 and 15.06.2021, there was a delay of 12 days, after excluding the Government Holidays of 8 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 12 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.

8. In fine, the Habeas Corpus Petition is allowed. The detention order made in H.S.(M) Confdl No.63/2021, dated 29.04.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Essaki Muthu, S/o.Thangavel Assari, aged about 45 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 //

/ /2021

Sub Assistant Registrar(CS)

ebsi/akv

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,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
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.

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RK/PM(17/11/2021) 4P 6C