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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.887 of 2021

S.Kaliraj

... Petitioner/ Detenu

-vs-

1.The State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Govt. of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai 600 009.

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

3.The Superintendent,
Central Prison,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus, to call for records pertaining to the proceedings of the second respondent made in his proceedings in No.TN.P, D.A.B.C.D.F.G.I.S.S.S.V.No.5/Goonda/2021 dated 26.01.2021 and quash the same and set the petitioner by name "Kaliraj, S/o Subbaiah Thevar, aged about 46 years" at liberty from third respondent.

For Petitioner : Mr.C.Karthikeya

For Respondents : Mr.S.Ravi

Standing counsel for Government

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 detenu, namely, S.Kaliraj, aged about 46 years, S/o Subbiah Thevar, against the detention order passed by the second respondent, in No.TN.P, D.A.B.C.D.F.G.I.S.S.S.V.No.5/Goonda/2021 dated 26.01.2021 branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu



2.Mr.C.Karthikeya, the learned counsel appearing for the petitioner would submit that the petitioner was arrested in connection with the case in Crime No.519 of 2020 for the offence under Sections 392 I.P.C and later altered into 392, 411, 414 I.P.C, on the file of Uchipuli Police Station and remanded to judicial custody and he has not filed any bail petition. Subsequently, he got bail in Cr.M.P.No.29 of 2021, on the file of the Judicial Magistrate No.II, Ramanathapuram dated 07.01.2021, in connection with similar case in Crime No.434 of 2020, under Sections 392, 411, 414 IPC. If the petitioner comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order, the second respondent/detaining authority has passed the impugned detention order. He would further submit that the petitioner/detenu was arrested on 26.11.2020 and remanded to judicial custody on 27.11.2020, but the detention order was passed by the second respondent only on 26.01.2021 and the reasons for such a long delay of 60 days was not properly explained. Further, the sponsoring authority did not place the entire materials before the detaining authority and the arrest intimation in the ground case was intimated only through SMS and no SMS report was annexed in the detention order.

3.Even though the learned counsel appearing 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.

4. Mr.S.Ravi, learned Standing counsel 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.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. In the instant case, the proforma furnished by the learned Standing counsel would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on Nil and it was received on 25.02.2021. Remarks were called for on the same day i.e. 25.02.2021 and it was received on 05.03.2021. The Deputy Secretary dealt with the matter on



05.03.2021. The concerned Minister dealt with the matter on 12.04.2021 and the representation came to be rejected on 15.04.2021. It is seen that in between 05.03.2021 and 12.04.2021, there was a delay of 24 days, after excluding the Government Holidays of 15 days, in considering the petitioner's representation.

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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 24 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 made in No.TN.P,D.A.B.C.D.F.G.I.S.S.S.V.No.5/Goonda/2021 dated 26.01.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, S.Kaliraj, aged about 46 years, S/o Subbiah Thevar, who is now detained in Central Prison, Madurai, 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)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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,
Govt. of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai 600 009.
- 2.The District Collector and District Magistrate,
Ramanathapuram District,
Ramanathapuram.
- 3.The Superintendent,
Central Prison,
Madurai.
- 4.The Joint Secretary,
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.887 of 2021
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MGJ(01.09.2021) 4P 6C