



WEB COPY

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.849 of 2021

Vijaya ... Petitioner/mother of the detenu
-vs-

1.The State of Tamil Nadu,
Represented by its Additional Chief Secretary to Government,
Home, Prohibition and Exercise Department,
Secretariat,
Chennai-600 009.

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

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

... 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 order or direction or to issue a Writ in the nature of Habeas Corpus to call for the order dated 10.03.2021 made in H.S.(M)Confdl.No.39/2021 on the file of the second respondent and quash the same and consequently direct the second respondent to produce the petitioner's son Thangakumar, S/o. Ramar now confined at Central Prison, Palayamkottai or his body before this Hon'ble Court and set him at liberty forthwith.

For Petitioner :Mr.B.Jeyakumar

For Respondents :Mr.A.Thiruvadikumar

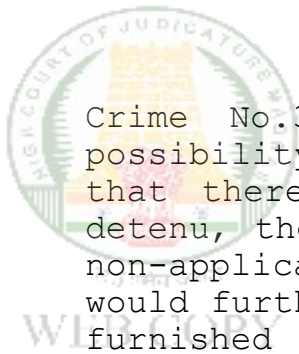
Standing counsel for the State

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 mother of the detenu, namely, Thangakumar, S/o. Ramar, aged about 25 years, challenging the detention order in H.S.(M)Confdl.No.39/2021 dated 10.03.2021, 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 detenu has not filed any bail application in the ground case in



Crime No.32 of 2021, as such, there is no imminent or real possibility of coming out on bail by the detenu, whereas, stating that there is a real possibility of coming out on bail by the detenu, the impugned detention order has been passed which reflects non-application of mind on the part of the detaining authority. He would further state that translated copy of the booklet has not been furnished to the detenu, which is in violation of Article 22(5) of the Constitution of India, which caused serious prejudice to the detenu from making effective representation to the higher authorities and there is no cogent materials to arrive at the subjective satisfaction and there is also no material to show that the activities of the detenu is prejudicial to the maintenance of public law and order to brand him as goonda and further, there is a delay in disposing of 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 furnished by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent dated 10.05.2021 and it was received on 17.05.2021. Remarks were called for on 17.05.2021 and it was received on 31.05.2021. The Deputy Secretary dealt with the matter on 31.05.2021. The concerned Minister dealt with the matter on 26.07.2021 and the representation came to be rejected on 26.07.2021. It is seen that in between 17.05.2021 and 31.05.2021, there was a delay of 13 days, after excluding the Government Holidays of 4 days, there was a delay of 9 days in the I part and in between 31.05.2021 and 26.07.2021, there was a delay of 55 days, after excluding the



Government Holidays of 17 days, there was a delay of 38 days in the II Part and totally there was a delay of 47 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 47 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.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in H.S.(M)Confdl.No.39/2021 dated 10.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Thangakumar, S/o. Ramar, aged about 25 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 :

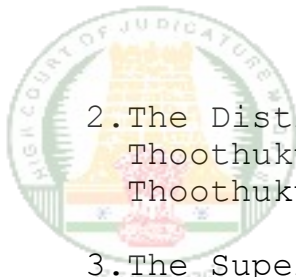
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Exercise Department,
Secretariat,

Chennai-600 009.

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



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

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

4.The Joint Secretary to Government,
Public (Law and Order),
Fort. St.George,
Chennai-9

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

ORDER MADE IN
H.C.P. (MD) No.849 of 2021
14.09.2021

GC(05.10.2021) 4P 6C