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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.577 of 2020

Kasthuri

... Petitioner

-vs-

1.The Additional Chief Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai - 600 001.

2.The District Collector,
Collectorate,
Theni - 625 531,
Theni District.

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

4.The Inspector of Police,
Chinnamanoor Police Station,
Theni District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records in pursuant to the proceedings of the 2nd respondent in D.O.No.34/20202 dated 20.07.2020 and quash the same and consequently, direct the respondent to produce the petitioner's husband, namely, Ramesh @ Arun son of Miniyan @ Ganesan to be confined at Central Prison, Madurai now confined at District Prison of Theni, before this Court and set him at liberty.

For Petitioner : Mr.M.Gurudas

For Respondents : Mr.S.Ravi

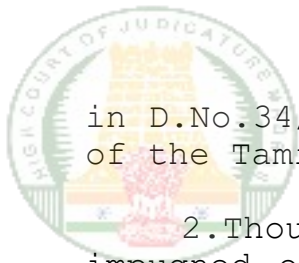
Standing Counsel

for Tamil Nadu Government

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The Habeas Corpus Petition has been filed by the wife of the detenu, namely, Ramesh @ Arun, son of Miniyan @ Ganesan, aged about 29 years, who has been branded as "Goonda" by the second respondent



in D.No.34/2020 dated 20.07.2020, as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2.Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 20.07.2020, Mr.M.Gurudas, learned counsel for the petitioner would contend that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India has been violated and there is an inordinate and unexplained delay in considering the representation of the petitioner and on this sole ground, the detention order is liable to be set aside.

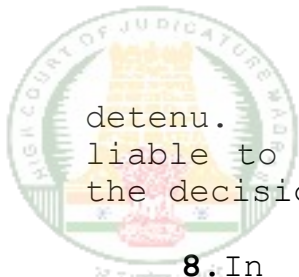
3.Per contra, Mr.S.Ravi, learned Standing Counsel appearing for the State would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the order of detention passed by the second respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

4.We have heard the rival submissions and perused the materials available on records.

5.In the instant case, it is not in dispute that the detenu was detained by the order of the second respondent dated 20.07.2020. Aggrieved over the same, a representation dated 03.08.2020 has been sent to the first respondent and the same was received on 07.08.2020 and on the same day, remarks were called for and the same was received on 15.10.2020. The Deputy Secretary dealt with the matter on 15.10.2020. The concerned Minister dealt with the matter on 04.11.2020 and thereafter, the detenu's representation was rejected on 06.11.2020. It is seen that there was delay of 19 days between 15.10.2020 and 04.11.2020. It is also seen that there are 5 Government holidays and after excluding the same, there is a delay of 14 days in considering the representation of the detenu.

6.In the case of **Rajammal vs. State of Tamil Nadu and another (1999 (1) SCC 417)** the Honourable Apex Court 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 any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

7. In the case on hand, there is absolutely no explanation for the delay of 14 days in considering the representation of the



detenu. 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 order of detention passed by the second respondent, in D.No.34/2020 dated 20.07.2020 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Ramesh @ Arun, son of Miniyan @ Ganesan, male, aged about 29 years, now detained at 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 (CSII)

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/ /2021

Sub Assistant Registrar(CS)

skn

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 the Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 600 001.
- 2.The District Collector,
Collectorate,
Theni - 625 531, Theni District.
- 3.The Superintendent of Prison,
Central Prison, Madurai.
- 4.The Inspector of Police,
Chinnamanoor Police Station, Theni District.
5. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George,
Chennai 600 009



6.The Additional Public prosecutor,
Madurai Bench of Madras High Court,
Madurai

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