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H.C.P.(MD) No.850 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

H.C.P. (MD) No.850 of 2021

V.Sakthivel

... Petitioner / Brother of Detenu

Vs.

1.State of Tamil Nadu,
Rep.by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

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

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

... Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in Cr.M.P.No.09 of 2021, dated 18.05.2021, on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's brother ie., Ayyanar, aged about 21 years, S/o.Viswanathan, now detained at the Central Prison, Trichirapalli, before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Krishnaveni

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

O R D E R

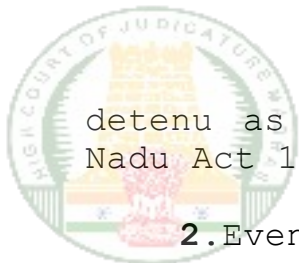
S.VAIDYANATHAN, J.

and

DR.G.JAYACHANDRAN, J.

This Habeas Corpus Petition has been filed by the brother of the detenu, challenging the detention order passed in Cr.M.P.No.09 of 2021, dated 18.05.2021, by the 2nd respondent, branding the

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detenu as "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

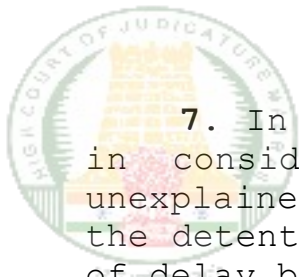
2. Even though the petitioner has raised several grounds to quash the impugned detention order, the learned counsel for the petitioner would mainly place arguments on the ground of delay in disposal of the petitioner's representation. In this regard, the learned counsel for the petitioner would state 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.A.Thiruvadi Kumar, the learned Additional Public Prosecutor, 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. Perusal of the proforma furnished by the learned Additional Public Prosecutor appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent dated 07.06.2021 and it was received on 14.06.2021. Remarks were called for on 14.06.2021 and it was received on 24.06.2021. The Deputy Secretary dealt with the matter on 24.06.2021. The concerned Minister dealt with the matter on 09.08.2021 and the representation came to be rejected on 09.08.2021. It is seen that in between 14.06.2021 and 09.08.2021, there was a delay of 54 days, after excluding the Government Holidays of 17 days, there was a delay of 37 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 any 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 37 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.

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8. In fine, the Habeas Corpus Petition is allowed. The detention order passed in Cr.M.P.No.09 of 2021, dated 18.05.2021, by the 2nd respondent, is set aside. Consequently, the detenu viz., Ayyanar S/o.Viswanathan, aged about 21 years, who is now detained in Central Prison, Tiruchirappalli, 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)

MPK

To

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

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

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

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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