



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P. (MD) No.586 of 2020

WEB COPY

Pakkiyam

... Petitioner/Father of the Detenu
-vs-

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Police,
Madurai City, Madurai.

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

4.The Inspector of Police,
Avaniyapuram Police Station,
Madurai City.

... 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 relating to the detention order No.22/BCDFGISSSV/2020 dated 29.07.2020 on the file of the second respondent and quash the same as illegal and to direct the respondents to produce the detenu Thangapandi, male, aged about 22 years, S/o.Pakkiyam, now detained at Central Prison, Madurai before this Court and set him at liberty forthwith.

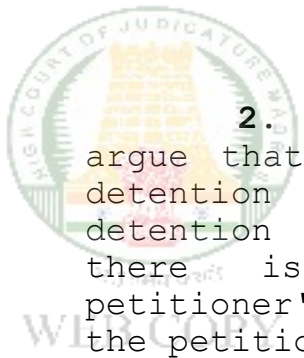
For Petitioner : Mr.Vaigunth for
Mr. B.Vinothkumar

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This habeas corpus petition has been filed by the father of the detenu, namely, Thangapandi, son of Packiyam, aged about 22 years, challenging the detention order No.22/BCDFGISSSV/2020, dated 29.07.2020, passed by the second respondent, branding him as "GOONDA" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.



2. Mr.Vaigunth, learned counsel for the petitioner, would argue that though several grounds have been raised to quash the detention order impugned in this Habeas Corpus Petition, the detention order is liable to be quashed on two ground. Firstly, there is unexplained and inordinate delay in disposal of the petitioner's representation. Secondly, the documents sought for by the petitioner for the detenu dated 07.08.2020 were not furnished.

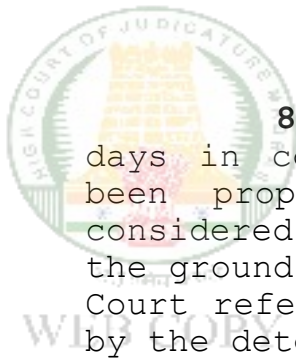
3. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, would argue that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no 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 both sides 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 07.08.2020 and it was received on 17.08.2020. Remarks were called for on the same day i.e., on 17.08.2020 and it was received on 26.08.2020. The Deputy Secretary dealt with the matter on 26.08.2020. The concerned Minister dealt with the matter on 03.09.2020 and the representation came to be rejected on 04.09.2020. It is seen that in between 26.08.2020 and 03.09.2020, there was a delay of 7 days, after excluding the Government Holidays of 2 days, there was a delay of 5 days in considering the petitioner's representation.

6. It is also seen that in the representation dated 07.08.2020 the detenu has sought for documents, but admittedly those documents have not been furnished to the detenu and no explanation has been offered for non furnishing of those documents, which deprived the valuable right of the detenu in making effective representation for revocation of the detention order.

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 5 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 on the ground of delay by following the decision of the Honourable Apex Court referred supra and for not furnishing of documents sought for by the detenu.

9. In fine, the Habeas Corpus Petition is allowed. The detention order No.22/BCDFGIISSSV/2020, dated 29.07.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Thangapandi, son of Packiyam, aged about 22 years, who is now detained at Madurai Central Prison, 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)

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/ /2021

Sub Assistant Registrar(CS)

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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 Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The Commissioner of Police, Madurai City, Madurai.
- 3.The Superintendent of Prison, Central Prison, Madurai.
- 4.The Inspector of Police, Avaniyapuram Police Station, Madurai City.
- 5.The Joint Secretary to Government,
Public(Law & Order), Fort St.George, Chennai-9.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.586 of 2020

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