



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :08.09.2021

CORAM:

**THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

H.C.P. (MD) No.883 of 2021

Sivagami

... Petitioner/wife of the detenu

-vs-

1. The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
3. The Superintendent of Prison,
Central Prison,
Thiruchirapalli.

... 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 records pertaining to the impugned detention order passed by the second respondent made in his proceedings in P.D.No.19/2021 dated 26.02.2021 in detaining the detenu under Section 2(f) of the Tamilnadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu namely Manikandan, S/o. Rajendran, Male, aged about 38 years, who is detained in Central Prison, Trichy, before this Hon'ble Court and set him liberty.

For Petitioner :Mr.K.M.Karunakaran

For Respondents :Mr.S.Ravi
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 wife of the detenu, namely, Manikandan, S/o. Rajendran, Male, aged about 38 years, challenging the detention order in P.D.No.19/2021 dated 26.02.2021, passed by the second respondent, branding him as



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

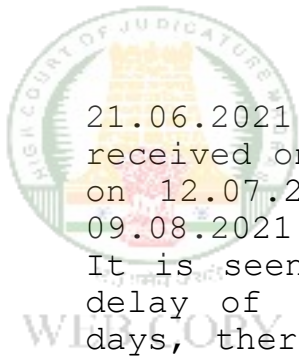
2.The learned counsel for the petitioner would state that the bail application filed by the detenu in the ground case in Cr.M.P.No.163 of 2021 was dismissed on 12.02.2021, whereas, stating that there is a real possibility of coming out on bail by the detenu, the impugned detention order has been passed which reflects non-application of mind on the part of the detaining authority. He would further state that the arrest of the detenu in the ground case and adverse cases were not at all informed to the family members of the detenu, which is in violation of the Constitution of India. It is further submitted that several pages in the booklet furnished to the detenu, the copies are not legible and readable and Tamil translation copies of the booklet has not been furnished to the detenu, 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 considering the petitioner's 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 14.06.2021 and it was received on



21.06.2021. Remarks were called for on 21.06.2021 and it was received on 12.07.2021. The Deputy Secretary dealt with the matter on 12.07.2021. 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 21.06.2021 and 12.07.2021, there was a delay of 20 days, after excluding the Government Holidays of 6 days, there was a delay of 14 days in the Ist part and in between 12.07.2021 and 09.08.2021, there was a delay of 27 days, after excluding the Government Holidays of 9 days, there was a delay of 18 days in the IInd Part and totally there was a delay of 32 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 32 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 P.D.No.19/2021 dated 26.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Manikandan, S/o.Rajendran, aged about 38 years, who is now detained at Central Prison, Trichy, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (T&P)

// 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 the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
3. The Superintendent of Prison,
Central Prison,
Thiruchirapalli.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort saint George,
Chennai-600 009.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.883 of 2021
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_RD(4.10.2021) 4P 6C