



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

H.C.P. (MD) No.916 of 2021

Kallathiyan alias Kambar

... Petitioner/Father of detenu

-vs-

1.The State of Tamil Nadu,
Represented 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,
Tirunelveli District,
Tirunelveli.

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

... 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, calling for the entire records connected with the detention order passed in M.H.S.Confdl No.35/2021 dated 08.04.2021, on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son i.e., Chendur alias Kadalmani, aged about 22 years, S/o.Kallathiyan alias Kambar, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.S.Ravi
Addl.Public Prosecutor

O R D E R

(Order of the Court was made by V. BHARATHIDASAN, J.)

This Habeas Corpus Petition has been filed by the father of the detenu, namely, Chendur alias Kadalmani, S/o. Kallathiyan alias Kambar, aged about 22 years, challenging the detention order in M.H.S.Confdl No.35/2021 dated 08.04.2021, passed by the second respondent, branding him as "Goonda", as contemplated under Section



2(f) of Tamil Nadu Act 14 of 1982.

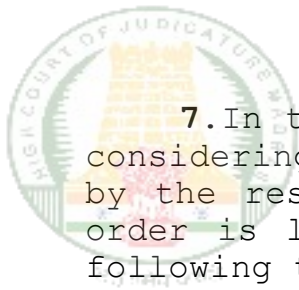
2. Even though the petitioner has raised several grounds to quash the impugned detention order, the learned counsel for the petitioner would mainly place arguments on the ground of delay in disposal of the petitioner's representation. In this regard, the learned counsel for the petitioner would state 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. S. Ravi, 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 23.06.2021 and it was received on 29.06.2021. Remarks were called for on 29.06.2021 and it was received on 02.08.2021. The Deputy Secretary dealt with the matter on 02.08.2021. The concerned Minister dealt with the matter on 05.08.2021 and the representation came to be rejected on 23.08.2021. It is seen that in between 29.06.2021 and 02.08.2021, there was a delay of 33 days, after excluding the Government Holidays of 11 days, there was a delay of 22 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 nay 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 22 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.

8. In fine, the Habeas Corpus Petition is allowed. The detention order in M.H.S.Confdl No.35/2021 dated 08.04.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Chendur alias Kadalmani, S/o. Kallathiyan alias Kambar, aged about 22 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 (A.D I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gbg/rm

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 Excise Department,
Fort.St.George,
Chennai-600 009.
2. The Joint Secretary to Government,
State of Tamil Nadu,
Public (Law & Order),
Fort St.George,
Chennai.
3. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.



4.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

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

ORDER MADE IN
H.C.P. (MD) No.916 of 2021
27.10.2021

PC (CO)
RS/JC (10.11.2021) 4P 6C