



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGOVAR

H.C.P. (MD) No.645 of 2020

Esakki Thevar

... Petitioner

-vs-

- 1.The Commissioner of Police
AR Line Road
Koripallam, Palayamkottai
Tirunelveli City, Tirunelveli
- 2.Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-9
- 3.Jailer / Superintendent of Prison
Central Prison, Palayankottai
Tirunelveli District
- 4.The State rep.by
Inspector of Police
Pettai Police Station
Tirunelveli, Tirunelveli District
- 5.The Superintendent
Sub Jail, Srivaikundam
Tirunelveli District

... 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 of the first respondent in his proceedings in No.8/BCDFGISSSV/2020, dated 17.08.2020 and quash the same and set the detainee namely Murugan, son of Esakki Thevar, aged about 37 years, to be confined at Central Prison, Palayamkottai, Tirunelveli, namely, third respondent prison, now detained at Sub-Jail, Srivaikundam, namely, the fifth respondent Prison at liberty.

For Petitioner : Mr.B.Prahalad Ravi, Advocate

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, Murugan, aged about 37 years, challenging the detention order No.8/BCDFGISSSV/2020, dated 17.08.2020, passed by the first respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Mr.B.Prahalad Ravi, learned counsel for the petitioner, would argue that even though the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representation. It is submitted by the learned counsel for the petitioner 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.K.Dinesh Babu, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the first respondent, submitted 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 23.09.2020 and it was received on 28.09.2020. Remarks were called for on the same day i.e.28.09.2020 and it was received on 13.10.2020. The Deputy Secretary dealt with the matter on 14.10.2020. The concerned Minister dealt with the matter on 28.10.2020 and the representation came to be rejected on the same day i.e.28.10.2020. It is seen that in between 14.10.2020 and 28.10.2020, there was a delay of ten days, after excluding the Government Holidays of three 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 ten 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 solely on the ground of delay by following the decision of the Honourable Apex Court referred supra.

8. In fine, the Habeas Corpus Petition is allowed. The detention order No.8/BCDFGISSSV/2020, dated 17.08.2020, passed by the first respondent, is set aside. Consequently, the detenu, namely, Murugan, son of Esakki Thevar, aged about 37 years, who is now detained at Sub-Jail, Srivaikundam, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Commissioner of Police,
AR Line Road,
Koripallam, Palayamkottai,
Tirunelveli City,
Tirunelveli.
- 2.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
- 3.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai-9



4.The Jailer / Superintendent of Prison,
Central Prison, Palayankottai,
Tirunelveli District.

5.The Inspector of Police,
Pettai Police Station,
Tirunelveli, Tirunelveli District.

6.The Superintendent,
Sub Jail,
Srivaikundam, Tirunelveli District.

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

+1 CC to M/s.B.PRAHALAD RAVI, Advocate (SR-5570[F] dated 17/02/2021

H.C.P. (MD) No.645 of 2020
16.02.2021

KRK

TK/SAR/27.02.2021/4P/9C