



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2021

CORAM:

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

H.C.P. (MD)No.990 of 2021

Robert ... Petitioner/ Father of Detenu

Vs.

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

2.The District Collector and District Magistrate,
District Collector's Office,
Thanjavur District.

3.The Superintendant,
Central Prison,
Tiruchirappalli. ... 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 detention order passed by the 2nd respondent in Detention Order made in P.D.No.25 of 2021, dated 03.03.2021 under Section 2(f) of Tamil Nadu Act, 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu namely, Rajadurai Son of Robert, Male, aged about 26 years, detained at Central Prison, Tiruchirapalli, before this Court and set him of liberty forthwith.

For Petitioner : Mr.A.Arunprasad
For Respondents : Mr.S.Ravi
Additional Public Prosecutor

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 father of the detenu, namely, Rajadurai, S/o.Robert, aged about 26 years, challenging the detention order in P.D.No.25/2021, dated 03.03.2021, passed by the second respondent, branding him as a "Goonda" as



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

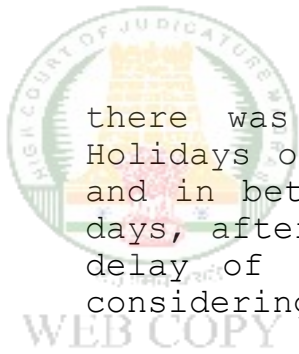
2.The learned counsel for the petitioner would state that the acts of the as stated in the grounds of detention will not come within the purview of 'violation of public order' and also failed to look into previous history of detenu while passing the detention order. In similar case bail was granted by the Principal District and Sessions Court, since the detaining authority come to conclusion that there is real possibility to come out on bail whereas similar case is not related to the ground case. When no bail application is filed in the remanded case, there is no imminent possibility of detenu coming out on bail. So many pages in the booklet are illegible and unable to read. Though the petitioner made a representation for furnishing clear copies of the said pages, till date, the respondent did not furnish the same. There is an inordinate delay in considering the petitioner's representation.

3.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.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 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 23.03.2021 and it was received on 07.04.2021. Remarks were called for on 08.04.2021 and it was received on 22.04.2021. The Deputy Secretary dealt with the matter on 22.04.2021. The concerned Minister dealt with the matter on 27.04.2021 and the representation came to be rejected on 27.04.2021. It is seen that in between 08.04.2021 and 22.04.2021,



there was a delay of 13 days, after excluding the Government Holidays of 5 days, there was a delay of 8 days in the first part and in between 22.04.2021 and 27.04.2021, there was a delay of 4 days, after excluding the Government Holidays of 2 days, there was a delay of 2 days, in total, there was a delay of 10 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 10 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.25/2021, dated 03.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Rajadurai, S/o.Robert, aged about 26 years, who is now detained at Central Prison, Trichirappalli, 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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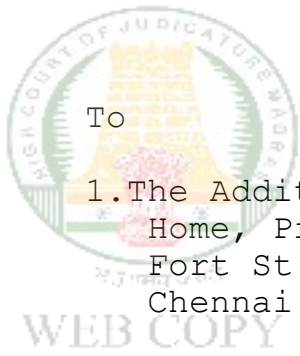
/ /2021

Sub Assistant Registrar(CS)

mpk

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,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
District Collector's Office,
Thanjavur District.
- 3.The Superintendant,
Central Prison,
Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law &Order) Fort St.Goerge, Chennai 600 009
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.990 of 2021
20.09.2021

DJ(CO)
KB(20.10.2021) 4P 6C