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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.ILANGOVAN
H.C.P.(MD) No.674 of 2020

T.Esakkiyammal ... Petitioner

-vs-

1.State of Tamil Nadu,
Rep. 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 filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order passed in M.H.S.Confdl.No.44/2020 dated 24.08.2020 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's husband i.e., Thangaraj, aged about 32 years, S/o Azhagu Konar, now detained at the Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

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

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The Habeas Corpus Petition has been filed by the wife of the detenu, namely, Thangaraj, son of Azhagu Konar, Male, aged about 32 years, who has been branded as "Goonda" by the second respondent in M.H.S.Confdl No.44/2020 dated 24.08.2020, as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

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2.Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 24.08.2020, Mr.N.Pragalathan, learned counsel for the petitioner would contend that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India has been violated and there is an inordinate and unexplained delay in considering the representation of the petitioner and on this sole ground, the detention order is liable to be set aside.

3.Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the order of detention passed by the second respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

4.We have heard the rival submissions and perused the materials available on records.

5.In the instant case, it is not in dispute that the detenu was detained by the order of the second respondent dated 24.08.2020. Aggrieved over the same, a representation dated 08.09.2020 has been sent to the first respondent and the same was received on 12.09.2020 and on the same day, remarks were called for and the same were received on 19.10.2020. The Deputy Secretary dealt with the matter on 19.10.2020. The concerned Minister dealt with the matter on 04.11.2020 and thereafter, the detenu's representation was rejected on 07.11.2020. It is seen that there was delay of 15 days between 19.10.2020 and 04.11.2020. It is also seen that there are 4 Government holidays and after excluding the same, there is a delay of 11 days in considering the representation of the detenu.

6.In the case of **Rajammal vs. State of Tamil Nadu and another (1999 (1) SCC 417)** the Honourable Apex Court 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, there is absolutely no explanation for the delay of 11 days in considering the representation of the detenu. Hence, in our considered view, the detention order is

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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 order of detention passed by the second respondent, in M.H.S.Confdl No.44/2020 dated 24.08.2020 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Thangaraj, son of Azhagu Konar, Male, aged about 32 years, 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

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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 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.

4.The Joint Secretary to Government,
Public(Law & Order),Fort St.George,Chennai-9.

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

H.C.P.(MD) No.674 of 2020
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