



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2021

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGO VAN**

H.C.P. (MD) No.683 of 2020

Lakshmi ... Petitioner/Mother of detenu

-vs-

1.The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.

2.State rep. by
The District Collector and District Magistrate ,
Thoothukudi District,
Thoothukudi.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records from the 2nd respondent in H.S(M) Confdl.No.57/2020 dated 20.08.2020 by setting aside the order of detention passed by the second respondent and setting the detenu Muthupandi, aged about 28 years, Son of Poolpandi at liberty now detained in the Central Prison, Palayamkottai.

For Petitioner : Mr.M.Mohan Gandhi

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 mother of the detenu, namely, Muthupandi, son of Poolpandi, Male aged about 28
<https://hcservices.ecourts.gov.in/hcservices/>



years, who has been branded as "Goonda" by the second respondent in H.S(M)Confdl.No.57/2020 dated 20.08.2020, as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

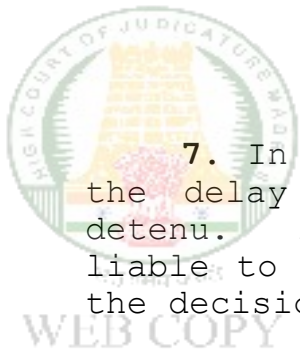
2.Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 20.08.2020, Mr.M.Mohan Gandhi, learned counsel for the petitioner would contend that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India 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 20.08.2020. Aggrieved over the same, a representation dated 02.09.2020 has been sent to the first respondent and the same was received on 08.09.2020 and on the same day, remarks were called for and the same were received on 22.09.2020. The Deputy Secretary dealt with the matter on 22.09.2020. The concerned Minister dealt with the matter on 04.11.2020 and thereafter, the detenu's representation was rejected on 09.11.2020. It is seen that there was delay of 42 days between 22.09.2020 and 04.11.2020. It is also seen that there are 8 Government holidays and after excluding the same, there is a delay of 34 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 34 days in considering the representation of the detenu. 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 order of detention passed by the second respondent, in H.S(M) Confdl.No.57/2020 dated 20.08.2020 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Muthupandi, Son of Poolpandi, male, aged about 28 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 (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Skn

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 & Excise Department,
Secretariat,
Chennai - 600 009.
2. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai-9
3. State rep. by
The District Collector and District Magistrate ,
Thoothukudi District,
Thoothukudi.



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

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

+1 CC to Mr.S.M.MOHAN GANDHI, Advocate (SR-1566[F]dated 21/01/2021)

H.C.P. (MD) No.683 of 2020
20.01.2021

VB (08.02.2021) 4P 7C