



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.1015 of 2021

V.Muthusamy ... Petitioner/father of the detenue

-vs-

1. The State of Tamil Nadu, Rep.by its
Additional Chief Secretary to Government,
Home, Prohibition and Exercise Department,
Fort St.George,
Chennai-600 009.
2. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai, ...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 relating to the Detention Order passed by the second respondent in H.S.(M)Confdl.No.27/2021 dated 17.02.2021 and quash the same and direct the respondents to produce the body or person of the detenue namely, Mariselvam, S/o. Muthusamy, aged about 21 years (now detained at Central Prison, Palayamkottai) before this Court and set him at liberty.

For Petitioner : Mr.V.Selvakumar

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, Mariselvam, S/o. Muthusamy, aged about 21 years, challenging the detention order in H.S.(M)Confdl.No.27/2021 dated 17.02.2021, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982.

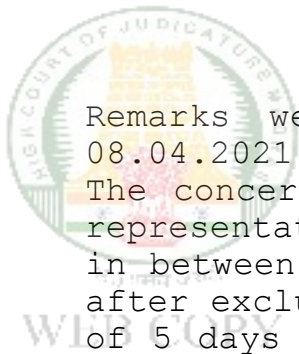
2.The learned counsel for the petitioner would state that the order of approval of detention was not served to the detenu and the detenu claims doubt whether the detention is approved or not. There is no material to show that the activities of the detenu is prejudicial to the maintenance of the public order under the provisions of 2(ggg) of the Tamil Nadu Act 14 of 1982. The Tamil and English version of the grounds of detention and booklet differs and therefore, the detenu was not able to effectively represent the case before the advisory board. 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 Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent dated Nil and it was received on 25.03.2021.



Remarks were called for on 25.03.2021 and it was received on 08.04.2021. The Deputy Secretary dealt with the matter on 09.04.2021. The concerned Minister dealt with the matter on 19.04.2021 and the representation came to be rejected on 20.04.2021. It is seen that in between 25.03.2021 and 08.04.2021, there was a delay of 13 days, after excluding the Government Holidays of 8 days, there was a delay of 5 days in the I part and in between 09.04.2021 and 19.04.2021, there was a delay of 10 days, after excluding the Government Holidays of 6 days, there was a delay of 4 days in the II Part and totally there was a delay of 9 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 9 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 H.S.(M)Confdl.No.27/2021 dated 17.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Mariselvam, S/o. Muthusamy, aged about 21 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 (CS I)

// True Copy //

/ /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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Exercise Department,
Fort St.George,
Chennai-600 009.
2. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort St. George,
Chennai - 600 009.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1015 of 2021
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MGJ(20.10.2021) 4P 6C