



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :10.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.736 of 2020

Sankarammal

... Petitioner/mother of the detenu

-vs-

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamilnadu,
Fort St. George, Chennai - 600009.
- 2.The District Collector and the District Magistrate,
Tirunelveli District,
Tirunelveli - 9.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
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 entire records connected with the detention order of the respondents No.2 in M.H.S.Confdl.No.50/2020, dated 27.08.2020 and quash the same and direct the respondents to produce the detenu by name Santhanamarimuthu, Son of Petchimuthu, aged about 22 years, now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner :Mr.R.Vinoth Bharathi

For Respondents :Mr.S.Ravi

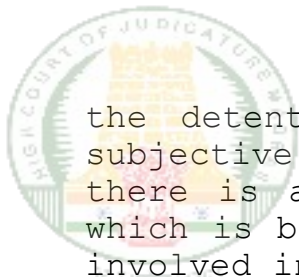
Standing counsel for the State

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 mother of the detenu, namely, Santhanamarimuthu, Son of Petchimuthu, aged about 22 years, challenging the detention order in M.H.S.Confdl.No.50/2020, dated 27.08.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982.

2. The learned counsel for the petitioner would state that when the detenu has not moved any bail application at the time of passing



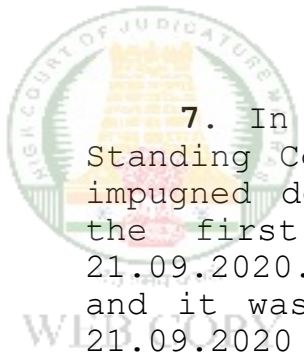
the detention order, the detaining authority has arrived at the subjective satisfaction in the grounds of detention stating that there is a real possibility of the detenu being released on bail which is baseless. He would further state that when the detenu has involved in the ground case alone, the detaining authority ought not to have stated in the grounds of detention that the detenu is committing sexual crimes which shows application of mind on the part of the detaining authority. There is no material regarding sexual assault by the detenu as alleged in the grounds of detention and the intimation of arrest in the ground case was given through SMS only, as such, the principles laid down in this regard in the case of D.K.Basu vs. State of West Bengal have not been followed. He would further state that while the detenu was arrested on 31.07.2020, the detaining authority has chosen to pass the detention order only on 27.08.2020 with an unexplained delay of 27 days.

3. The learned counsel for the petitioner would further state that similar case materials relied on by the detaining authority while passing the impugned detention order, was not supplied to the detenu and several pages in the booklet are in English and Tamil version of the said pages was not supplied to the detenu or his family members, and therefore, the detenu was not able to represent his case effectively before the Advisory Board and the authorities and the representation of the detenu seeking Tamil Version of the pages was not considered expeditiously.

4. 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. Thus, he would pray to quash the impugned order of detention.

5. The learned Standing Counsel 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.

6. Heard the learned counsel for the petitioner as well as the respondents.



7. In the instant case, the proforma furnished by the learned Standing Counsel for the State would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 15.09.2020 and it was received on 21.09.2020. Remarks were called for on the same day i.e. 21.09.2020 and it was received on 27.10.2020. It is seen that in between 21.09.2020 and 27.10.2020, there was a delay of 35 days, after excluding the Government Holidays of 7 days, there was a delay of 28 days in getting the remarks and there is no explanation for the said delay. The Deputy Secretary dealt with the matter on 27.10.2020. The concerned Minister dealt with the matter on 04.11.2021. It is seen that between 27.10.2020 and 04.11.2021, there was a delay of 7 days, after excluding the Government Holidays of 2 days, there was a delay of 5 days in considering the petitioner's representation. Finally, the representation came to be rejected on 06.11.2021. Therefore, totally 33 days delay in considering the petitioner's representation.

8. 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.

9. In the case on hand, as stated supra, the delay of 33 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 decision of the Honourable Apex Court referred supra.

10. In fine, the Habeas Corpus Petition is allowed. The detention order in M.H.S.Confdl.No.50/2020, dated 27.08.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Santhanamarimuthu, Son of Petchimuthu, aged about 22 years who is now detained at Palayamkottai Central Prison, 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-II)

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/ /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 Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamilnadu,
Fort St. George,
Chennai - 600009.
- 2.The District Collector and the District Magistrate,
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Tirunelveli - 9.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 4.The Joint Secretary to Government,
Public (Law and Order),
Fort. St.George,
Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.736 of 2020
10.08.2021

GC (27.08.2021) /4P/6C