



WEB COPY

H.C.P.(MD) No.794 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGOVA

H.C.P. (MD) No.794 of 2020

M.Nilo Parveen

: Petitioner/Wife of the detenu

-vs-

1. The Additional Chief Secretary to Government of India,
Home Prohibition and Excise Department,
Secretariat, Chennai-9.

2. The District Collector/District Magistrate,
Thanjavur District,
O/o.The District Collector Office,
Thanjavur.

3. The Superintendent of Prison,
Tiruchirappalli Central Prison,
Tiruchirappalli.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus, calling for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings in P.D.No.50 of 2020, dated 01.09.2020 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the Detenu namely, Mohamed Gani, S/o.Kamal Batcha, Male, aged about 37 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

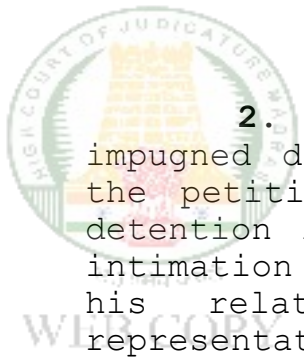
For Petitioner : Mr.J.Sulthan Basha
for M/s.Ajmal Associates

For Respondents : Mr.R.Anandharaj
Additional Public Prosecutor

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This habeas corpus petition has been filed by the wife of the detenu, namely, Mohamed Gani, son of Kamal Batcha, aged about 37 years, against the detention order passed by the second respondent, in P.D.No.50 of 2020, dated 01.09.2020, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.



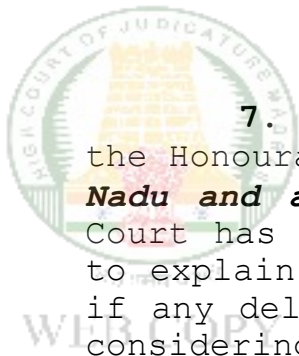
2. Though several grounds have been raised challenging the impugned detention order, Mr.J.Sulthan Basha, learned counsel for the petitioner, would mainly contend that the impugned order of detention is liable to be set aside on the grounds of failure of intimation of arrest of the detenu either to his family members or his relatives and delay in considering the petitioner's representation.

3. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, on instructions, submitted that the detention order has been rightly passed by the second respondent taking note of the activities of the detenu and it has been passed to prevent the detenu from indulging in similar activities in future. It is the further submission of the learned Additional Public Prosecutor that the arrest of the detenu has been properly intimated to his family members and the delay in disposal of the representation has not caused any prejudice to the detenu and hence, prayed for dismissal of the habeas corpus petition.

4. We have heard the rival submissions and perused the materials placed on record.

5. In the case on hand, though it is contended by the learned Additional Public Prosecutor that the arrest of the detenu has been properly intimated to the family members of the detenu, a perusal of Page No.57 of the booklet would show that the arrest of the detenu in the ground case on 20.08.2020 was intimated to Cell No.9952340299, but there is nothing on record to show that said cell number belongs to the family members or relatives of the detenu. This Court, following the decision of the Honourable Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**, in several cases, has consistently held that if there is no proper intimation of arrest of the detenu either to his family members or his relatives, his valuable rights would be seriously prejudiced on the sense that they will not have the opportunity to make effective representation to the Authority concerned in time for revocation of the detention order.

6. Further, it is seen from the proforma furnished by the learned Additional Public Prosecutor that the representation of the petitioner, dated 16.09.2020, was received on 21.09.2020. Remarks were called for on 21.09.2020 and it was received on 23.10.2020. The Deputy Secretary dealt with the matter on 23.10.2020. The concerned Minister dealt with the matter on 04.11.2020 and the representation came to be rejected on 06.11.2020. It is seen that in between 21.09.2020 and 04.11.2020, there was a delay of 42 days, after excluding the Government Holidays of 10 days, there was a delay of 32 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 32 days has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the grounds as stated above by following the decisions of the Honourable Apex Court referred supra.

9. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in P.D.No.50 of 2020, dated 01.09.2020, is set aside. Consequently, the detenu, namely, Mohamed Gani, son of Kamal Batcha, aged about 37 years, who is now detained at Central Prison, Tiruchirappalli is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /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 of India,
Home Prohibition and Excise Department,
Secretariat,
Chennai-9.
2. The District Collector/District Magistrate,
Thanjavur District,
O/o.The District Collector Office,
Thanjavur.

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



3. The Superintendent of Prison,
Tiruchirappalli Central Prison,
Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort St.George,
Chennai-09.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.Ajmal Associates, in CA SR.No.584.

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NA (CO)
CS (21.01.2021) 4P 7C