



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.1078 of 2021

Kokila

... Petitioner/Mother of the Detenu

-vs-

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
 2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.
 3. The Superintendent,
Central Prison,
Tiruchirappalli.
- ...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 in detention order passed in C.M.P.No.06/2021 dated 16.02.2021 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely, Santhosh alias Santhoshkumar, S/o.Natarajan, aged about 21 years, who is detained in Central Prison, Tiruchirappalli before this court and set him at liberty.

For Petitioner :Mr.K.A.S.Prabhu

For Respondents :Mr.S.Ravi

Additional Public Prosecutor

O R D E R

(Order of the Court was made by V. BHARATHIDASAN, J.)

This habeas corpus petition has been filed by the wife of the detenu, viz., Santhosh @ Santhoshkumar, S/o.Natarajan, aged about 21 years, challenging the detention order in C.M.P.No.06/2021 dated 16.02.2021, passed by the second respondent, branding him as



"Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

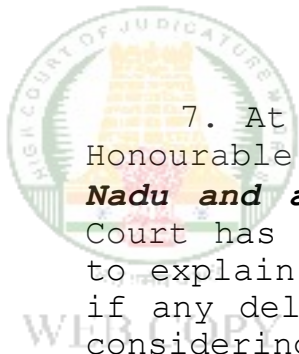
2. Mr.K.A.S.Prabhu, learned counsel appearing for the petitioner, would submit that there was no intimation of arrest of the detenu either to his family members or his relatives. According to the learned counsel for the petitioner, the non-intimation of arrest would seriously affect the valuable rights of the detenu to make effective representation to the Authorities concerned for revocation of the detention order. Further, the detention order was passed against the detenu on the basis of the G.O. issued by the Government in G.O.(D).No.13, Home, Prohibition and Excised (XVI) Department, dated 11.01.2021. But, the said G.O., was not served along with the grounds of detention as well as detention order.

3. Mr.S.Ravi, learned Additional Public Prosecutor appearing for the State, on instructions, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. It is also stated that even if there is any delay in disposal of the representation, it has not caused any prejudice to the rights of the detenu and hence, prayed for dismissal of the habeas corpus petition.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. Even though the learned counsel for the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representation. It is submitted by the learned counsel for the petitioner 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. In the instant case, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 26.07.2021 and it was received on 28.07.2021. Remarks were called for on the same day ie., on 28.07.2021 and it was received on 03.08.2021. The Deputy Secretary dealt with the matter on 03.08.2021. The concerned Minister dealt with the matter on 23.08.2021 and the representation came to be rejected on 23.08.2021. It is seen that in between 03.08.2021 and 23.08.2021, there was a delay of 19 days, after excluding the Government Holidays of 6 days, there was a delay of 13 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 13 days in considering the representation of the petitioner has not been properly explained 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.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in C.M.P.No.06/2021, dated 16.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, Santhosh @ Santhoshkumar, S/o.Natarajan, aged about 21 years, who is now detained at Central Prison, Tiruchirapalli, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

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,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.

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



3. The Superintendent,
Central Prison,
Tiruchirappalli.

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.1078 of 2021
DATED : 06.10.2021

SJ(CO)
KB(10.11.2021) 4P 6C