



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2021

CORAM:

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

H.C.P. (MD) No.812 of 2020

Indra

... Petitioner

-vs-

1.State of Tamilnadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
O/o.District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

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 entire records in detention order No.M.H.S.Confdl No.69/2020, dated 18.09.2020 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Manikandan, son of Sudalaikkan, aged 27 years, who is detained in Central Prison, Palayamkottai, Tirunelveli District before this Court and set him at liberty.

For Petitioner : Mr.M.Murugesan

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, Manikandan, son of Sudalaikkan, aged about 27 years, against the detention order passed by the second respondent, in M.H.S.Confdl.No.69/2020, dated 18.09.2020, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.

2.M.Murugesan, learned counsel for the petitioner, would argue that even though 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.

3. Mr.R.Anandharaj, learned Additional Public Prosecutor, 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 both sides and perused the materials available on record.

5. 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 28.09.2020 and it was received on 05.10.2020. Remarks were called for on 05.10.2020 and it was received on 04.12.2020. The Deputy Secretary dealt with the matter on 04.12.2020. The concerned Minister dealt with the matter on 09.01.2021 and the representation came to be rejected on 11.01.2021. It is seen that in between 05.10.2020 and 04.12.2020, there was a delay of 59 days, after excluding the Government Holidays of 11 days, there was a delay of 48 days in considering the petitioner's representation.

6. 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.

7. In the case on hand, as stated supra, the delay of 48 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.

8. In fine, the Habeas Corpus Petition is allowed. The detention order in M.H.S.Confdl.No.69/2020, dated 18.09.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Manikandan, son of Sudalaikkan, aged about 27 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 (CO)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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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,
Secretariat,
Chennai-600 009.



2.The Joint Secretary to Government,
Public(Law and Order),
Fort.St.George, Chennai-9.

3.The District Collector and District Magistrate,
O/o.District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

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

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

H.C.P. (MD) No.812 of 2020
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