



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD)No.862 of 2020

M.Syed Ibrahim,
S/o.K.A.Mohamed Ravuthar,F/o. Yasin Mohammed Ali
No.36/76, R.C.Street,
Palanganatham,
Madurai.

... Petitioner/Father of the Detenu

vs.

1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 9.

2.The Commissioner of Police,
Madurai,
Madurai City.

... 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 pertaining to the detention order in No.15/BCDFGISSSV/2020, dated 04.07.2020 passed by the second respondent and quash the same and consequently, set the detenu namely Yasin Mohammed Ali, son of Syed Ibrahim, male, aged 23 years, who is confined at Central Prison, Madurai, at liberty forthwith.

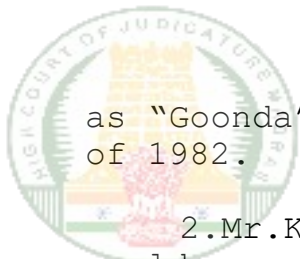
For Petitioner : Mr.K.Jayaseelan

For Respondents : Mr.S.Ravi
Standing counsel for Government

O R D E R

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

This Habeas Corpus Petition has been filed by the father of the detenu, namely, Yasin Mohammed Ali, son of Syed Ibrahim, aged about 23 years, against the detention order passed by the second respondent, in No.15/BCDFGISSSV/2020, dated 04.07.2020, branding him



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

2.Mr.K.Jayaseelan, learned counsel appearing 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 second 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.S.Ravi, learned Standing counsel appearing for the respondents, 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. The learned Standing Counsel further submitted that as per the grounds of detention, the detenu is involved in three adverse cases, but his actual involvement in the cases runs to 29. It is also stated that there is no delay in considering the first representation of the petitioner and the delay has occurred only in the second representation and even if there is any delay in disposal of the second 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.In the instant case, the proforma furnished by the learned Standing counsel would indicate that as against the impugned detention order, the petitioner made a second representation to the first respondent on 10.09.2020 and it was received on 15.09.2020. Remarks were called for on the same day i.e. 15.09.2020. The Deputy Secretary dealt with the matter on 22.09.2020. The concerned Minister dealt with the matter on 06.11.2020 and the representation came to be rejected on 06.11.2020. It is seen that in between 22.09.2020 and 06.11.2020, there was a delay of 35 days, after excluding the Government Holidays of 9 days, in considering the petitioner's second 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 35 days in considering the second 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 made in No.15/BCDFGISSSV/2020, dated 04.07.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Yasin Mohammed Ali, son of Syed Ibrahim, aged about 23 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

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 Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.
2. The Commissioner of Police,
Madurai,
Madurai City.
3. The Superintendent, Central Prison, Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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