



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P.(MD) No.894 of 2020

Kanagapandi

... Petitioner/ Detenu

vs.

- 1.The Additional Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai 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 Respondent No.2 in Detention order No.53 of 2020, dated 05.09.2020 and quash the same and direct the respondents to produce the body or person of the detenu by name Kanagapandi, son of Kamaraj, aged about 28 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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

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 detenu, namely, Kanagapandi, S/o.Kamaraj, aged about 28 years, against the detention order passed by the second respondent, in Detention Order No.53 of 2020, dated 05.09.2020, branding him as 'Goonda' as contemplated under Section 2(f) of the Tamil Nadu Act, 14 of 1982.

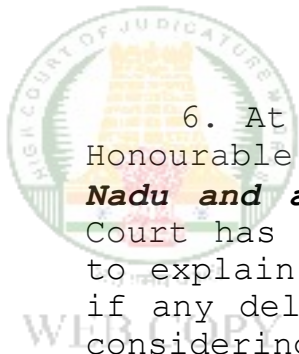


2. Mr.R.Alagumani, learned counsel appearing for the petitioner, would argue that the detenu has not filed any bail petition in the remanded case and he has filed the bail petition only in the ground case and the same was also dismissed. However, the Detaining Authority, to arrive at the subjective satisfaction, relied on the bail order granted by the learned Judicial Magistrate, Nilakottai. It is the submission of the learned counsel that when no bail petition has been filed by the detenu in the remanded case, the subjective satisfaction reached by the Detaining Authority is without any basis and there is no imminent possibility of the detenu coming out on bail by filing bail petition before the appropriate Court. Further, the petitioner has sent a representation to the respondents 1 and 2, on 07.10.2020, but the same were not placed before the Advisory Board under Section 10 of the Act 14 of 1982. It is the further submission of the learned counsel for the petitioner that the detenu has sent a representation to the first respondent, on 16.10.2020, requesting him to supply translated version copies of the documents. But the same was not considered. 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 and 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. 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. 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 representation to the first respondent on 17.10.2020 and it was received on 23.10.2020. Remarks were called for on the same day i.e., on 23.10.2020 and it was received on 09.11.2020. The Deputy Secretary dealt with the matter on 10.11.2020. The concerned Minister dealt with the matter on 16.11.2020 and the representation came to be rejected on 17.11.2020. It is seen that in between 23.10.2020 and 09.11.2020, there was a delay of 10 days, after excluding the Government Holidays of 5 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 10 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 made in Detention Order No.53 of 2020, dated 05.09.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Kanagapandi, S/o.Kamaraj, aged about 28 years, who is now detained at Madurai 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)

// 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 Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.



2.The Joint Secretary go Government,
Public(Law&Order),
Fort St.George, Chennai - 600 009.

3.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District.

4.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

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

H.C.P. (MD) No.894 of 2020
23.08.2021

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