



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :11.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.957 of 2020

Umadevi

... Petitioner/mother of the detenu

-vs-

1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Home, Prohibition and Excise (XIV) Department,
Fort St. George,
Chennai - 600 009.

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

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

... 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 detention order of the second respondent in Proceedings in No.35/BCDFGISSSV/2020 dated 16.09.2020 and quash the same and consequently direct the respondents to produce the detenu namely Mr.Nagaraj @ Snake Nagaraj, S/o.Gandhi, aged 26 years, before this Court, who is detained at Central Prison, Madurai and set him at liberty.

For Petitioner :Mr.M.Kannan

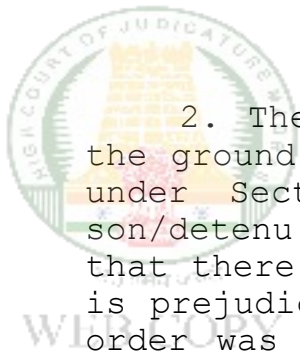
For Respondents :Mr.S.Ravi

Standing counsel for the State

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 mother of the detenu, namely, Nagaraj @ Snake Nagaraj, S/o.Gandhi, aged 26 years, challenging the detention order in No.35/BCDFGISSSV/2020 dated 16.09.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.



2. The learned counsel for the petitioner would state that in the ground case registered in Crime No.1535 of 2020 for the offence under Sections 392, 397 and 506(ii) of IPC, the petitioner's son/detenu has been arrested on 17.08.2020. He would further state that there is no material to show that the activities of the detenu is prejudicial to the maintenance of public order and the detention order was not communicated to his mother thereby the right of the detenu envisaged under Article 21 of the Constitution of India is affected.

All the documents have been prepared hurriedly and hastily in order to invoke Act 14 of 1982 against the detenu and on that basis, the detention order has been passed. He would also state that there is no material that surrender and arrest of the petitioner's son was intimated to the friend or relative of the detenu and Tamil version of surrender order has not been supplied to the detenu thereby the detenu could not make effective representation. It is also submitted that even before filing of the charge sheet, in the surrender and remand orders, there is a mention about PRC.No.92/2019 and there is no explanation in this regard by the detaining authority. The learned counsel also contended that even though the ground case has been registered against the petitioner's son and one another accused, the detention order has been passed against the detenu alone which is discriminatory.

3.The learned Standing Counsel appearing for the respondents would state that after satisfying with the materials placed by the sponsoring authority, the detaining authority has passed the impugned detention order and therefore, there is no infirmity or illegality in the same. He would produce the proforma regarding the disposal of the petitioner's representation and would state that even if there is any delay in disposal of the petitioner's representation, it has not caused any prejudice to the rights of the detenu. Thus, he would pray for dismissal of this petition.

4. Heard the learned counsel for the petitioner as well as the respondents.

5. Perusal of the proforma produced by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner has made a representation to the 1st respondent on 28.10.2020 which was received on 02.11.2020. Remarks on the said representation were called for on 02.11.2020 and it was received on 10.11.2020. The Deputy Secretary concerned has dealt with the representation on 10.11.2020 and the Hon'ble Minister concerned has dealt with the representation on 16.11.2020 and finally, the representation came to be rejected on 17.11.2020. It is seen that in between 02.11.2020 and 10.11.2020, there is a delay of 7 days. After excluding the Government holiday of one day, there is a delay of 6 days in Ist part, in between 10.11.2020 and 16.11.2020, there was a delay of 5 days, after excluding the Government holidays of two days, there was a delay of 3 days in IInd part and in between 16.11.2020 and 17.11.2020, there was a delay of 1 day. Thus, there was a delay of 9 days in considering the representation.



petitioner's consideration.

6. At this juncture, it is useful to refer to the decision of the Hon'ble Supreme Court in the case of **Rajammal vs. State of Tamil Nadu and another** reported in **1999 (1) CC 417**, wherein, the Apex Court has held that it is for the authority concerned to explain the delay, if any, in disposal of the representation of the detenu and if any delay was caused on account of any 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 9 days in considering the representation of the petitioner remains unexplained by the respondents. Hence, in our considered view, the impugned detention order is liable to be set aside solely on the ground of delay by following the above decision of the Apex Court.

8. In fine, the Habeas Corpus Petition is allowed. The detention order in No.35/BCDFGISSSV/2020 dated 16.09.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Nagaraj @ Snake Nagaraj, S/o.Gandhi, aged 26 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 (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

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,
State of Tamil Nadu,
Home, Prohibition and Excise (XIV) Department,
Fort St. George,
Chennai - 600 009.



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

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

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.957 of 2020

DATED : 11.08.2021

MGJ(26.08.2021) 4P 6C