



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :20.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI

H.C.P. (MD) .No.1029 of 2020

Seethalakshmi

... Petitioner/Mother of the Detenu
-vs-

1. The Principal Secretary to Government
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
 2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Pudhukottai.
 3. The Superintendent of Prison,
Trichy Central Prison,
Trichy District.
- ... Respondents

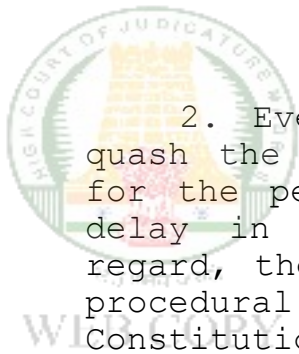
PRAYER : Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of the Respondent No.2 in P.D.O.No.75/2020, dated 04.11.2020 and quash the same and direct the respondents to produce the body or person of the detenu by name Ganesan son of Senthilkumar, aged about 32 years, now detained as "Sexual Offender" at Trichy Central Prison before this Court and set him at liberty forthwith.

For Petitioner	:	Mr.R.Alagumani
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 detenu, namely, Ganesan, S/o.Senthilkumar, aged about 32 years, against the detention order passed by the second respondent, in P.D.O.No.75/2020 dated 04.11.2020, branding him as 'Sexual Offender' as contemplated under Section 2(ggg) of Tamil Nadu Act, 14 of 1982.



2. Even though the petitioner has raised several grounds to quash the impugned detention order, the learned counsel appearing for the petitioner would mainly place arguments on the ground of delay in disposal of the petitioner's representation. In this regard, the learned counsel for the petitioner would state 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.

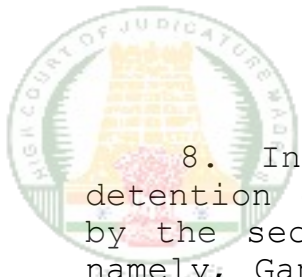
3. Mr.S.Ravi, learned Additional Public Prosecutor appearing for the respondents submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. It is also stated 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 Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 17.11.2020 and it was received on 23.11.2020. Remarks were called for on the same day i.e., on 23.11.2020 and it was received on 16.12.2020. The Deputy Secretary dealt with the matter on 16.12.2020. 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 23.11.2020 and 16.12.2020 and in between 16.12.2020 and 09.01.2021, there was a delay of 33 days, after excluding the Government Holidays of 12 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 33 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 P.D.O.No.75/2020, dated 04.11.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Ganesan, S/o. Senthilkumar, aged about 32 years, who is now detained at Central Prison, Trichy 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-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv/ebsi

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 Principal Secretary to Government
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Pudhukottai.
3. The Superintendent of Prison,
Trichy Central Prison, Trichy District.
4. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER MADE IN

H.C.P. (MD) No.1029 of 2020

20.10.2021

ac(CO)

TR/PM(18.11.2021) 3P 6C