



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2021

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

H.C.P. (MD) No.1044 of 2020

G.Sumithra

... Petitioner

-vs-

- 1.State of Tamil Nadu
represented by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009
 - 2.The District Collector and the District Magistrate,
Thoothukudi District, Thoothukudi.
 - 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- ... 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 passed in H.S. (M) Confdl. No.96/2020, dated 24.10.2020 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son i.e., Kisinger, aged about 28 years, S/o.Glaston, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Muthumalairaja

For Respondents : Mr.S.Chandrasekar
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 mother of the detenu, namely, Kisinger, S/o.Glaston, aged about 28 years, challenging the detention order in H.S.(M) Confdl.No.96/2020, dated 24.10.2020, passed by the second respondent, branding him as



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

2. Mr.S.Muthumalairaja, 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.S.Chandrasekar, 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 11.11.2020 and it was received on 23.11.2020. Remarks were called for on the same day i.e. 23.11.2020 and it was received on 05.12.2020. The Deputy Secretary dealt with the matter on 05.12.2020. 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 05.12.2020 and 09.01.2021, there was a delay of 25 days, after excluding the Government Holidays of 14 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 25 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 H.S.(M) Confdl.No.96/2020, dated 24.10.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Kisinger, S/o.Glaston, aged about 28 years, who is now detained at Palayamkottai 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)

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 District Collector and the District Magistrate,
Thoothukudi District, Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.
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.1044 of 2020

21.04.2021

nsm(CO)

TR(11.06.2021) 3P 6C