



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.1083 of 2020

R.Rengasamy ... Petitioner/father of the detenu

-vs-

1. Government of Tamil Nadu,
Rep. By it is the Principal Secretary to Government,
Home, Prohibition and Excise Department, Secretariat,
Chennai - 600 009.
2. The Commissioner of Police,
The Commissioner of Police Office,
Tiruchirappalli.
3. The Superintendent,
Central Prison,
Tiruchirappalli. ... 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 connected with the detention order of the second respondent in his detention order in C.No.23/Detention/C.P.O/T.C/2020 dated 07.09.2020 and quash the same and direct the respondents to produce the body and person of the petitioner's son namely Praveenraj, S/o.Rengasamy, Male aged about 20 years now confined at Central Prison, Tiruchirappalli and set him at liberty forthwith.

For Petitioner :Mr.V.Selvakumar
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 father of the detenu, namely, Praveenraj, S/o.Rengasamy, aged about 20 years, challenging the detention order in C.No.23/Detention/C.P.O/T.C/2020 dated 07.09.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

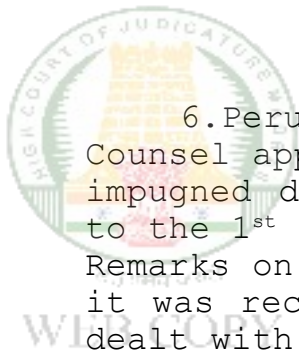


2.The learned counsel for the petitioner would state that in the ground case registered in Crime No.254 of 2020 under Section 392 r/w 397 and 506(ii) IPC, the petitioner's son/detenu has been arrested on 16.07.2020 and his bail application in the ground case is pending before the Principal District and Sessions Judge, Tiruchirappalli, as such, there is no imminent or real possibility of coming out on bail by the detenu, whereas, stating that there is a real possibility of coming out on bail by the detenu, the impugned detention order has been passed which reflects non application of mind on the part of the detaining authority. He would further state that if the detaining authority has real intention to brand the detenu as goonda, he ought to have passed the detention order within 30 days from the date of remand in the ground case, whereas, it is more than 50 days in the present case. He would also state that the detention order has been passed only on previous similar nature of cases pending against the detenu which according to the petitioner are all false cases and though the detention order was passed on 07.09.2020, it was served on the detenu only on 10.09.2020. It is further submitted that several pages in the typedset of grounds furnished to the detenu, the copies are not legible and readable which caused serious prejudice to the detenu from making effective representation to the higher authorities and there is no cogent materials to arrive at the subjective satisfaction and there is also no material to show that the activities of the detenu is prejudicial to the maintenance of public law and order to brand him as goonda.

3.Even though the petitioner has raised the above grounds to quash the impugned detention order, the learned counsel 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. Thus, he would pray to quash the impugned order of detention.

4.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.

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



6.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 29.10.2020 which was received on 03.11.2020. Remarks on the said representation were called for on 04.11.2020 and it was received on 07.11.2020. The Deputy Secretary concerned has dealt with the representation on 07.11.2020 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 07.11.2020 and 16.11.2020, there is a delay of 8 days. After excluding the government holidays of 2 days, there is a delay of 6 days in considering the petitioner's consideration.

7.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.

8.In the case on hand, as stated supra, the delay of 6 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.

9.In fine, the Habeas Corpus Petition is allowed. The detention order in C.No.23/Detention/C.P.O/T.C/2020 dated 07.09.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Praveenraj, S/o.Rengasamy, aged about 20 years, who is now detained at Central Prison, Tiruchirappalli, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

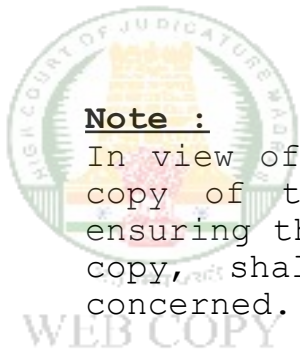
Assistant Registrar (P&A)

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/ /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 Principal Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department, Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Police,
The Commissioner of Police Office,
Tiruchirappalli.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law and Order),
Fort. St.George,
Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1083 of 2020
DATED : 11.08.2021

GC (27.08.2021) /4P/6C