



WEB COPY

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.1091 of 2020

Suresh ... Petitioner/ detenu

-vs-

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

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

3.The Superintendent of Prison,
Madurai 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 entire records, connected with the detention order of the second respondent in No.63/BCDFGISSSV/2020 dated 09.11.2020 and quash the same and direct the respondents to produce the body or person of the detenu by name Suresh, Son of Sankar, aged about 23 years, now detained as "Goonda" at Madurai Central Prison before this Honourable Court and set him at liberty forthwith.

For Petitioner :Mr.R.Alagumani

For Respondents :Mr.S.Ravi

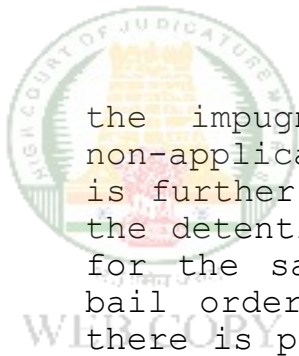
Standing counsel for the State

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 detenu namely, Suresh, Son of Sankar, aged about 23 years, challenging the detention order in No.63/BCDFGISSSV/2020 dated 09.11.2020, 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 at the time of passing the detention order, bail application was pending in the ground case, as such, there is no imminent or real possibility of coming out on bail by the detenu, whereas, stating that there is 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. It is further submitted that the detenu was arrested on 21.07.2020 and the detention order was passed on 09.11.2020 and there is no reason for the said delay and the detaining authority relied on similar bail orders relating to the case of one Sekar to establish that there is possibility of the detenu coming out on bail in the ground case. However, the alleged similar cases are not similar with the ground case.

3. It is further submitted that the detenu was arrested on 21.07.2020 and the detaining authority passed the detention order only on 09.11.2020 ie., after 80 days and the reason for the above said delay in passing the detention order is not explained properly and even though the ground case was registered against several persons, the detaining authority has passed the detention order only against the detenu and some other accused and the reason for pick and choose the detenu and some others alone in passing the detention order, is not explained by the detaining authority. There is no cogent materials to state that if the comes out on bail, he will indulge in similar activities which will cause prejudice to the maintenance of law and order. Further, several pages in the booklet are in English and illegible and therefore, the petitioner was not able to understand and prefer effective oral and written representation before the Advisory Board. Further, the place of detention was not intimated properly to the detenu's relatives, as such, the detaining authority failed to follow the principles laid down by the Honourable Supreme Court in D.K.Basu vs. State of West Bengal and A.K.Roy cases while arresting and detaining the detenu, which would vitiate the detention order.

4. 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.

5. Mr.S.Ravi, learned Standing Counsel appearing for the State, 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.



6. Heard both sides and perused the materials available on record.

7. 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 dated 27.11.2020 and it was received on 03.12.2020. Remarks were called for on the same day i.e. 03.12.2020 and it was received on 08.12.2020. The Deputy Secretary dealt with the matter on 08.12.2020. 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 08.12.2020 and 09.01.2021, there was a delay of 32 days, after excluding the Government Holidays of 7 days, there was a delay of 25 days in considering the petitioner's representation.

8. 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.

9. In the case on hand, as stated supra, the delay of 25 days in considering the representation of the petitioner remains unexplained 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.

10. In fine, the Habeas Corpus Petition is allowed. The detention order in No.63/BCDFGISSSV/2020 dated 09.11.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Suresh, Son of Sankar, aged about 23 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 (Crl.Side)

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/ /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 Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
- 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.1091 of 2020
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GC (01.09.2021) /4P/6C