



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2021

CORAM:

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P.(MD) No.1149 of 2020

M.Gandhi

... Petitioner/father of the Detenu

-vs-

1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The District Collector/District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Superintendent,
Central Prison,
Palayamkottai.

4.The Inspector of Police,
Kayathar Police Station,
Thoothukudi District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records relating to the detention order passed by the 2nd respondent in his proceedings in H.S(M).Confdl.No.98/2020 dated 29.10.2020 and to quash the same and direct the respondents to produce the body or person of the detenu namely Ayyanar, aged 30 years, before this Court and set him at liberty, now detained at Central Prison, Palayamkottai.

For Petitioner :Mr.K.Mahendran

For Respondents :Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The Habeas Corpus Petition has been filed by the father of the
[detenu namely, Ayyanar, son of M.Gandhi, male, aged about 30 years,](https://hservices.ecourts.gov.in/hcservices/)



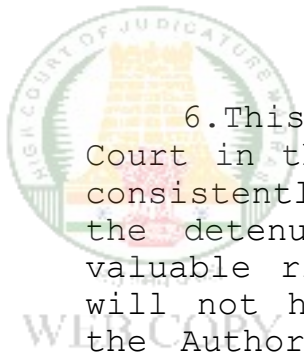
who has been branded as "Goonda" by the second respondent in H.S(M). Confdl.No.98/2020 dated 29.10.2020, as contemplated under Section 2 (e) of the Tamil Nadu Act 14 of 1982.

2.The learned counsel for the petitioner Mr.K.Mahendran would argue that though several grounds have been raised to challenge the order of detention, it is liable to be set aside on three grounds. Firstly, on the ground of failure to intimate the arrest of the detenu either to his family members or his relatives. According to the learned counsel, non-intimation of the arrest to the relatives of the detenu or his family members infringed the rights of the detenu in making effective representation to the authorities to revoke the detention order. In this regard, the learned counsel has placed reliance upon the decision of the Honourable Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**. Secondly, there is lack of application of mind on the part of the detaining authority to reach the subjective satisfaction. Thirdly, on the ground of unexplained and inordinate delay in considering the representation of the petitioner, which would vitiate the detention orders. In this regard, the learned counsel has placed reliance upon 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**.

3.Per contra, the learned Additional Public Prosecutor appearing for the respondents would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the cogent materials produced by the sponsoring authority, has passed the detention orders only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the detention orders passed by the second respondent. Hence, he prayed for dismissal of the Habeas Corpus Petitions.

4.We have heard the rival submissions and perused the materials available on records.

5. In the case on hand, perusal of the arrest intimation form available at Page No.107 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell No.9626984177. However, there is no material to show that the said Cell Number belongs to the family members of the detenu or his relatives and the text of the message is also not found place in the booklet.



6.This Court, following the decision of the Honourable Apex Court in the case of **D.K.Basu** (cited supra), in several cases, has consistently held that if there is no proper intimation of arrest of the detenu either to his family members or his relatives, his valuable rights would seriously be prejudiced on the sense that they will not have the opportunity to make effective representation to the Authority concerned in time for revocation of the detention order.

7.Further, in the case on hand, the detenu was formally arrested in the ground case on 01.10.2020 and remanded to the judicial custody upto 23.10.2020 and his bail application in Cr.M.P.No.1632 of 2020 was pending consideration with the Judicial Magistrate No.II, Kovilpatti, but in the grounds of detention, it is stated that there is a real possibility of the detenu coming out on bail by filing bail petition in the appropriate Courts, which shows the non-application of mind on the part of the detaining authority.

8. Further, in the instant case, it is not in dispute that the detenu was detained by the order of the second respondent, dated 29.10.2020. Aggrieved over the same, a representation dated 09.11.2020 has been sent to the first respondent and the same was received on 12.11.2020 and on the same day, remarks were called for and the remarks were received on 07.12.2020. The Deputy Secretary dealt with the matter on 07.12.2020. The concerned Minister dealt with the matter on 09.01.2021 and thereafter, the detenu's representation was rejected on 12.01.2021. It is seen that there was delay of 31 days between 07.12.2020 to 09.01.2021. It is also seen that there are 8 Government holidays and after excluding the same, there is a delay of 23 days in considering the representation of the detenu.

9.In the case of **Rajammal vs. State of Tamil Nadu and another (1999 (1) SCC 417)** the Honourable Apex Court 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 any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

10. In the case on hand, there is absolutely no explanation for the delay of 23 days in considering the representation of the detenu. Hence, in our considered view, the detention order is liable to be set aside on the ground of delay also by following the decision of the Honourable Apex Court referred supra.

11.In fine, the order of detention passed by the second respondent, in H.S(M).Confdl.No.98/2020 dated 29.10.2020 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Ayyanar, son of M.Gandhi, male, aged about 30 years,



now detained at Central Prison, Palayamkottai is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar()

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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 the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
 - 2.The District Collector/District Magistrate,
Thoothukudi District,
Thoothukudi.
 - 3.The Superintendent,
Central Prison,
Palayamkottai.
 - 4.The Joint Secretary to Government,
Public (Law and Order),
Fort St.George, Chennai-9.
 - 5.The Inspector of Police,
Kayathar Police Station,
Thoothukudi District.
 - 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +CC to Mr.K.Mahendran, ADVOCATE,SR.13965

H.C.P. (MD) No.1149 of 2020
26.03.2021

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RM 20/05/2021 (4P-8C)

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