



WEB COPY

H.C.P.(MD) No.1136 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGOVA

H.C.P. (MD) No.1136 of 2020

Jegadhambal

... Petitioner

-vs-

1. State of Tamil Nadu, rep.by
The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009
 2. The District Collector and District Magistrate
O/o.The District Collector and District Magistrate
Ariyalur District, Ariyalur
 3. The Superintendent
Central Prison, Tiruchirappalli
- ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records in detention order passed in Cr.M.P.No.74/2020, dated 28.10.2020, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Elamparithi, son of Chokkalingam, male, aged 33 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

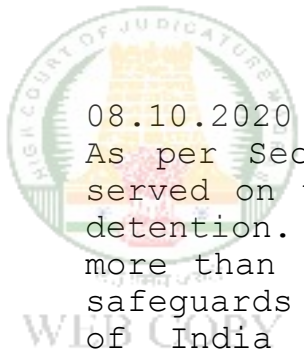
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

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, Elamparithi, son of Chokkalingam, aged 33 years, against the detention order in Cr.M.P.No.74/2020, dated 28.10.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.

2. Mr.K.A.S.Prabhu, learned counsel for the petitioner would submit that the detenu was arrested in the ground case on



08.10.2020 and the detention order came to be passed on 28.10.2020. As per Section 8 of the Act, the relied on documents have to be served on the detenu within a period of five days from the date of detention. But, in the case on hand, it was served after a lapse of more than five days. It is further contended 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. The learned Additional Public Prosecutor, on instructions, would submit that the detention order has been passed by the second respondent on cogent and relevant materials furnished by the Sponsoring Authority and also considering the gravity of the offence. According to the learned Additional Public Prosecutor, there is no illegality or infirmity in the order of detention passed by the second respondent and hence, the habeas corpus petition is liable to be dismissed.

4. Heard the learned counsel on either side and perused the materials available on record.

5. In the case on hand, it is seen from the records that the detention order was passed on 28.10.2020, however, as per the typed set filed by the petitioner, the relied on documents have been supplied to the detenu only on 06.11.2020 after a lapse of more than five days. Section 8 of the Act mandates serving of the booklet and other relevant documents on the detenu within a period of five days from the date of detention. Since there was a delay in furnishing the relied on documents to the detenu, we are of the opinion that the impugned order of detention is liable to be set aside.

6. Further, 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 07.12.2020 and it was received on 09.12.2020. Remarks were called for on the same day i.e. 09.12.2020 and it was received on 22.12.2020. The Deputy Secretary dealt with the matter on the same day i.e. 22.12.2020. 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 22.12.2020 and 09.01.2021, there was a delay of twelve days, after excluding the Government Holidays of six days, in considering the petitioner's representation.

7. 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.

8. In the case on hand, as stated supra, the delay of twelve 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 on the grounds of delay in furnishing the relied on documents to the detenu and delay in considering the petitioner's representation by following the decision of the Honourable Apex Court referred supra.

9. In fine, the Habeas Corpus Petition is allowed. The order of detention in Cr.M.P.No.74/2020, dated 28.10.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Elamparithi, son of Chokkalingam, aged 33 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 (CS-I)

// 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.

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To:

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate.
O/o.The District Collector and District Magistrate.
Ariyalur District, Ariyalur/



3. The Superintendent.
Central Prison, Tiruchirappalli/
4. The Joint Secretary to Government,
Public (Law & Order) Fort St. George,
Chennai-9
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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VB (07.04.2021) 4P 6C