



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.1174 of 2020

WEB COPY

Esakkimuthu alias Muthuesakki ... Petitioner/ Detenu

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 District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Central Prison,
Trichy,
Trichy District.

... 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 M.H.S. Confdl No.113/2020 dated 27.11.2020 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Esakkimuthu alias Muthuesakki, aged about 19 years, S/o.Shanmugasundaram alias Pandi alias Jailpandi, now detained at the Central Prison, Trichy, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.S.Ravi

Standing counsel for Government

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, Esakkimuthu alias Muthuesakki, S/o.Shanmugasundaram alias Pandi alias Jailpandi, aged about 19 years, against the detention order passed by the second respondent, in M.H.S. Confdl No.113/2020 dated 27.11.2020, branding him as 'Goonda' as contemplated under Section 2(f) of Tamil Nadu Act, 14 of 1982.



2. Mr.N.Pragalathan, learned counsel appearing for the petitioner would submit that the detenu has not filed any bail petition in the remanded case. However, the Detaining Authority, to arrive at the subjective satisfaction, has stated that in a similar case, bail was granted to some other person. It is the submission of the learned counsel for the petitioner that when no bail petition has been filed by the detenu in the remanded case, the subjective satisfaction reached by the Detaining Authority is without any basis and there is no imminent possibility of the detenu coming out on bail by filing bail petition before the appropriate Court. Further, he would submit that the similar case relied on by the Detaining Authority is not similar to the case of the detenu and moreover, the similar case particulars have not been furnished to the detenu. Even though the learned counsel for 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.Ravi, learned Standing counsel appearing for the respondents, 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 the learned counsel appearing on either side and perused the materials available on record.

5. In the instant case, the proforma furnished by the learned Standing counsel would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 08.12.2020 and it was received on 11.12.2020. Remarks were called for on the same day i.e., on 11.12.2020 and it was received on 28.12.2020. The Deputy Secretary dealt with the matter on 29.12.2020. 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 11.12.2020 and 28.12.2020, there was a delay of 12 days, after excluding the Government Holidays of 4 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 12 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 made in M.H.S.Confdl No.113/2020, dated 27.11.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Esakkimuthu alias Muthuesakki, S/o.Shanmugasundaram alias Pandi alias Jailpandi, aged about 19 years, who is now detained at Central Prison, Trichy, 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-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

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,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretairat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Superintendent of Prison,
Central Prison,
Trichy,
Trichy District.

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.1174 of 2020
12.08.2021

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