



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
H.C.P. (MD)No.1202 of 2020

R.Parisha ... Petitioner

Vs.

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

2.The District Collector and Judicial Magistrate Court,
Theni District,
Theni.

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, to call for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in Detention Order 68/2020, dated 10.11.2020 in detaining the detenu under Section 2(ggg) of the Tamil Nadu Act 14 of 1982, as a Goonda and quash the same and direct the respondents to produce the detenu namely Rahim @ Kamardeen, Male, aged about 47 years, who is detained in Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.JSulthan Basha,
For Ajmal Associates

For Respondents : Mr.S. Ravi
Additional Public Prosecutor

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 wife of the detenu namely Rahim @ Kamardeen, S/o. Pitchai Maideen, aged about

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



47 years, challenging the Detention Order No.68/2020, dated 10.11.2020, passed by the second respondent, branding him as "Sexual Offender" as contemplated under the Tamil Nadu Act 14 of 1982.

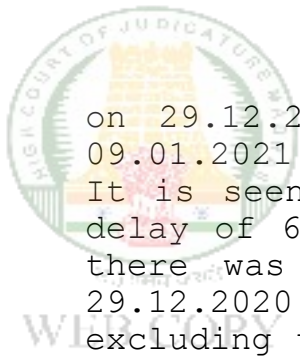
2.The learned counsel for the petitioner would state that the detenu has filed the bail application in connection with Crime No.13 of 2020, before the Mahila Court, Theni, in Cr.M.P.No.496 of 2020, and the same was dismissed on 19.10.2020. But in the grounds of detention, the detaining authority has mentioned that the accused has not filed a bail petition till now. Hence, the very reading of the detention order is completely contrary to the truthful facts of the case. Further, the arrest was not properly intimated to the relatives or friends of the detenu. The detaining authority is entitled to oppose any bail application likely to be filed by the detenu. But without opposing the bail application clamping the order of detention prejudging the mind of the court suffers from non-application of mind and vitiates lack of subjective satisfaction and there is an inordinate delay in considering the petitioner's representation.

3.The learned Additional Public Prosecutor 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.

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

5.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.

6.Perusal of the proforma furnished by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent dated 08.12.2020 and it was received on 17.12.2020. Remarks were called for on 17.12.2020 and it was received on 24.12.2020. 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 12.01.2021. It is seen that in between 17.12.2020 and 24.12.2020, there was a delay of 6 days, after excluding the Government Holidays of 1 day, there was a delay of 5 days in the first part and in between 29.12.2020 and 09.01.2021, there was a delay of 10 days, after excluding the Government Holidays of 3 days, there was a delay of 7 days in the second part and totally there was a delay of 12 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 12 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 above decision of the Apex Court.

9. In fine, the Habeas Corpus Petition is allowed. The Detention Order No.68 of 2020, dated 10.11.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Rahim @ Kamardeen, son of Pitchai Maideen, aged about 47, 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 (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mpk

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 of Tamil Nadu,
Home Prohibition and Excise Department,
Secretariat,
Chennai-9.

2.The District Collector and Judicial Magistrate Court,
Theni District,
Theni.

3.The Superintendent of Prison,
Madurai Central prison,
Madurai.

4.The Joint Secretary to Government,
Public (Law & Order),
Fort saint George, Chennai-600 009.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-29993[F] dated
23/09/2021)

H.C.P. (MD)No.1202 of 2020
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RD(20.10.2021) 4P 7C