



WEB COPY

H.C.P.(MD) No.798 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

H.C.P.(MD) No.798 of 2021

Petchivel

... Petitioner

-vs-

1.The Additional Chief Secretary to Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St., George,
Chennai-600 009.

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

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli 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 of the Respondent No.2 in No.24/BCDFGISSSV/2021, dated 30.04.2021 and quash the same and direct the respondents to produce the body or person of the detenu by name Petchivel, son of Esakkiraj, aged about 24 years, now detaining as "Goonda" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

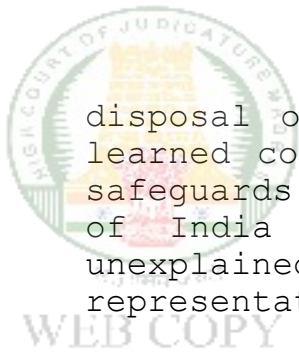
For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

O R D E R

This Habeas Corpus Petition has been filed by the detenu, challenging the detention order passed in No.24/BCDFGISSSV/2021, dated 30.04.2021, by the 2nd respondent, branding him as "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2.Even though the petitioner has raised several 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.

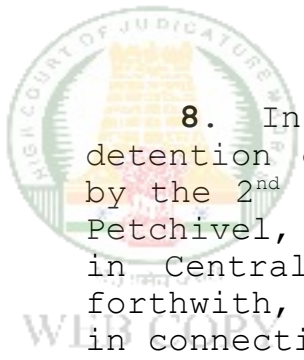
3. Mr.A.Thiruvadikumar, the learned Additional Public Prosecutor, appearing for the respondents would state that after satisfying with the materials placed by the sponsoring authority, the detaining authority has passed the impugned detention order and therefore, there is no infirmity or illegality in 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. Perusal of the proforma furnished by the learned Additional Public Prosecutor appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent dated 12.05.2021 and it was received on 25.05.2021. Remarks were called for dated Nil and it was received on 25.05.2021. The Deputy Secretary dealt with the matter on 25.05.2021. The concerned Minister dealt with the matter on 30.05.2021 and the representation came to be rejected on 26.07.2021. It is seen that in between 30.05.2021 and 26.07.2021 there was a delay of 57 days, after excluding the Government Holidays of 17 days, there was a delay of 40 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 any 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 40 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.



8. In fine, the Habeas Corpus Petition is allowed. The detention order passed in No.24/BCDFGISSSV/2021, dated 30.04.2021, by the 2nd respondent, is set aside. Consequently, the detenu viz., Petchivel, S/o.Esakkiraj, aged about 24 years, who is now detained in 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 (AD II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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 Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St., George,
Chennai-600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City,
Tirunelveli.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort St. George,
Chennai - 600 009.

**H.C.P. (MD) No.798 of 2021
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MGJ(20.01.2022) 3P 5C

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