



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

HABEAS CORPUS PETITION (MD) No.1511 of 2014

Nalan

.. Petitioner

Vs.

- 1.The Secretary to Government,
Public (Law and Order-F) Department,
State of Tamil Nadu,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
- 3.The Secretary to the Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block,
New Delhi - 110 001.
- 4.The Superintendent of Prison,
Madurai Central Prison,
Madurai.

.. Respondents

Prayer:- Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus praying to call for entire records, connected with the detention order of the respondent No.2 in No.01/NSA/2014, dated 11.12.2014 and quash the same and direct the respondents to produce the detenu by name Selvam @ Varichiyur Selvam, Son of Karuppaiah Servai, aged about 46 years now detained in Madurai Central Prison before this Court and set him at liberty forthwith and pass such further or other orders.

For Petitioner
For RR 1, 2 & 4

: Mr.R.Alagumani
: Mr.K.Chellapandian
Additional Advocate General
for Mr.C.Ramesh
Additional Public Prosecutor
: Mr.D.Saravanan
Central Government Senior
Standing Counsel

For R - 3

ORDER

(Order of the Court was made by A.SELVAM, J)

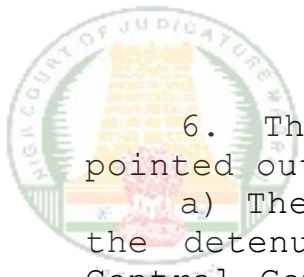
This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India praying to call for records relating to detention order passed in No.01/NSA/2014, dated 11.12.2014 by the detaining authority, who has been arrayed as second respondent herein against the detenu by name Selvam @ Varichiyur Selvam, Son of Karuppaiah Servai and quash the same and thereby set him at liberty forthwith.

2. The Inspector of Police, E3 Anna Nagar Police Station as sponsoring authority has submitted an affidavit to the detaining authority, wherein it is stated that on 10.11.2014 one Veereswaran, Village Administrative Officer, Sathamangalam Village has given a complaint in E3 Anna Nagar Police Station wherein it is stated that he and his henchmen have found country made bombs and consequently, a case has been registered in Crime No.1490 of 2014 under Section 4 of Explosive Substances Act, 1908 against the detenu and others and ultimately requested the detaining authority to invoke National Security Act, 1980 (Central Act 65 of 1980) against the detenu.

3. The detaining authority, after perusing the averments made in the affidavit and other connected documents, has derived subjective satisfaction to the effect that the detenu is a habitual offender and committed crimes one after another and ultimately detained him under the National Security Act, 1980 (Central Act 65 of 1980) by way of passing the impugned detention order and in order to quash the same, the present Habeas Corpus Petition has been filed by the son of the detenu as petitioner.

4. On the side of the respondents 1, 2 and 4 a detailed counter has been filed, wherein it is stated that the detaining authority, after considering the habitual nature of the detenu, has rightly detained him under the National Security Act, 1980 (Central Act 65 of 1980) and further, the representation submitted on the side of the detenu has been duly disposed of without delay and therefore, the detention order in question does not call for any interference.

5. In the counter filed on the side of the third respondent it is averred that the representation as well as parawise remarks of detaining authority have been reached the Central Government on 04.02.2015 and the same has been rejected on 06.02.2015. Further, a report envisaged under Section 3(5) of the National Security Act, 1980 (Central Act 65 of 1980) has been received from the Central Government on 08.01.2015 and no delay on the part of the Central Government and therefore, the detention order in question is not liable to be quashed.



6. The learned counsel appearing for the petitioner has pointed out the delay in two stages.

a) The first and foremost stage is that the representation of the detenu as well as parawise remarks have been sent to the Central Government on 28.12.2014, but the same have been received on 04.02.2015 and no explanation has been given by the respondents with regard to such delay.

b) As per Section 3(5) of the National Security Act, 1980 (Central Act 65 of 1980) a report has to be sent within a period of seven days and even though the same has been prepared on 22.12.2014, the Central Government has received the same on 08.01.2015 and no explanation has been given by the respondents with regard to such delay.

7. Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents 1, 2 and 4 as well as Mr.D.Saravanan, Central Government Senior Standing Counsel appearing for the third respondent have clearly accepted that as per Section 3(5) of the National Security Act, 1980 (Central Act 65 of 1980), a report has to be sent within a period of seven days either from the date of detention order or from the date of approval, but in the instant case, the same has been sent to the Central Government on 22.12.2014, reached the Central Government only on 08.01.2015.

8. As rightly pointed out on the side of the petitioner in paragraph No.5 of the counter filed by the third respondent it has been clinchingly stated that the representation and parawise remarks have been prepared on 28.12.2014, but the same has reached the Central Government only on 04.02.2015 and no explanation has been given with regard to delay occurred during interregnum period. Likewise, a report under Section 3(5) of the National Security Act, 1980 (Central Act 65 of 1980) has been sent to the Central Government on 22.12.2014, but it has reached the Central Government on 08.01.2015 as per averments made in paragraph No.7 of the counter. No explanation has been given by the respondents.

9. As rightly pointed out on the side of the petitioner, in two spells unexplained delay has occurred and the same would affect the rights of the detenu. Under the said circumstances, the detention order in question is liable to be quashed.

10. In fine, this Habeas Corpus Petition is allowed and the detention order passed in No.01/NSA/2014, dated 11.12.2014 by the second respondent/detaining authority is quashed and consequently the respondents are directed to set the detenu viz., Selvam @ Varichiyur Selvam, Son of Karuppaiah Servai at liberty forthwith, unless he is required to be incarcerated in connection with any other case.

Sd/-

Assistant Registrar(T&P)



ps
To

1. The Secretary to Government,
Public (Law and Order-F) Department,
State of Tamil Nadu,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City,
Madurai.
3. The Secretary to the Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block,
New Delhi - 110 001.
4. The Superintendent of Prison,
Madurai Central Prison,
Madurai.
5. The Joint Secretary to Government,
6. Public (law & Order) Fort St., George, Chennai-9.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+3cc to MR.R.ALAGUMANI, ADVOCATE IN SR NOS.33174 AND 33490

+1CC TO MR.D.SARAVANAN, ADVOCATE IN SR NO.33124

ORDER MADE IN
H.C.P (MD) No.1511 of 2014
23.06.2015

RG.24.06.2015 4P/11C.