

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 26.04.2018****CORAM:**

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P.(MD)No.345 of 2018

Prakash

... Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in P.D.No.08 of 2018 dated 28.02.2018 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Prakash, aged about 24 years, S/o. Manikandan, now detained at Central Prison, Palayamkottai, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner
For Respondents

: Mr.N.Pragalathan
: Mr.V.Neelakandan
Additional Public Prosecutor.

ORDER**(Order of the Court was made by C.T.SELVAM,J.)**

The petitioner is the detenu viz., Prakash, Son of Manikandan, aged about 24 years. The detenu has been detained by order in P.D.No.08 of 2018, dated 28.02.2018, holding him to be a "Drug Offender", as contemplated under 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



2. Though the order of detention has been assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that the representation made by the petitioner for revocation of the order of detention was not considered within a reasonable time and such enormous delay in considering the representation amounts to denial of reasonable opportunity vitiating the order of detention.

3. The learned counsel for the petitioner further submits that after the detention order is approved by the State Government, the Detaining Authority, which is other than the State Government, becomes *functus officio* and the rejection of the representation made by the petitioner on behalf of the detenu should have been made only by the State Government and not by the Detaining Authority. The representation made by the detenu, dated 09.03.2018, came to be rejected not by the State Government, but by the Detaining Authority, on 14.03.2018, nearly, one week after the Government approved the order of detention. On that ground also, the order of detention stands vitiated.

4. We also heard the submissions made by the learned Additional Public Prosecutor on the above said contentions raised on behalf of the petitioner.

5. As rightly contended by the learned counsel for the petitioner, the Detaining Authority, after the detention order was approved by the Government, ought to have transmitted the representation to the Government for the consideration of the Advisory Board and orders by the Government. The very fact that the Detaining Authority chose to pass an order of rejection after the detention order was approved by the Government, will show exercise of power, which is not conferred on the Detaining Authority. On that score alone, the order of detention is liable to be set aside.

6. In the result, the Detention Order, passed by the second respondent, in his proceedings in P.D.No.08 of 2018, dated 28.02.2018, is quashed. The detenu, namely, Prakash, son of Manikandan, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

7. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(CS-II)

/True Copy/



To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.
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.

Sj

AE/SV/SAR1/14.06.2018/3P/6C

H.C.P. (MD) No. 345 of 2018
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