



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2018

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

HCP [MD].No.1545 of 2017

Vignesh

: 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,
Kanyakumari District, Nagercoil.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.

: 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 P.D.No.65 of 2017, dated 05.10.2017 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 Vignesh, aged about 24 years, S/o.Vijayan, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

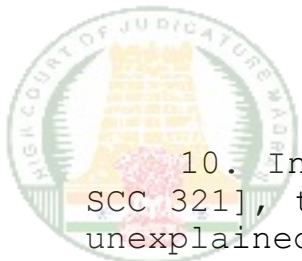
For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor

ORDER

[Order of the Court was made by **S.VIMALA, J**]

The petitioner is the detenu viz., Vignesh, S/o.Vijayan, aged about 24 years. The detenu has been detained, as per the order of the second respondent, dated 05.10.2017, under Section 2(ggg) of the Tamil Nadu Habitual Offenders Act, 1982, branding him as "Sexual Offender". Challenging the same, the petitioner has come up with this Habeas Corpus Petition.



10. In Tara Chand Vs. State of Rajasthan and others, [1980 (2) SCC 321], the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

11. In the decision in JAYANARAYAN SUKUL v. STATE OF WEST BENGAL reported in AIR 1970 SC 675, it has been held that the Government has to be vigilant in the governance of the citizens and that the representation should be considered as early as possible without any delay.

12. If any representation is received prior to passing the order of detention, the four principles are to be followed in letter and spirit, which reads as follows:-

"First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to measure the time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board."

13. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 07 working days and therefore, the impugned detention order is liable to be quashed.

14. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in P.D.No.65 of 2017, dated 05.10.2017, is quashed. The detenu, namely Vignesh, S/o.Vijayan, aged about 24 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (W)

/True Copy/



1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The Joint Secretary to Government,
Public (Law and Order),
Fort. Saint George, Chennai. 09.
3. The District Collector and District Magistrate,
Kanyakumari District, Nagercoil.
4. The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
(in duplicate for communication to the detenu)
5. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
HCP [MD].No.1545 of 2017
30.01.2018

RJ2
SDS/SKN:RSK/SAR 2/30.01.2018/4P/7C