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H.C.P.(MD) No.6 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.6 of 2020

S.Prema ... Petitioner/Wife of Detenue

-VS-

1.State of Tamil Nadu

Rep.by the 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

... 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.48/2019, dated 10.12.2019, on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, the petitioner's husband i.e., Siva @ Sivaperuman @ Siva Perumal, aged about 43 years, son of Pauldurai, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

Heard Mr.N.Pragalathan, learned counsel for the petitioner and Mr.V.Neelakandan, learned Additional Public Prosecutor and perused the materials available on record.



2. This habeas corpus petition has been filed by the wife of the detenu, namely, Siva @ Sivaperuman @ Siva Perumal, son of Pauldurai, aged about 43 years, against the detention order in P.D.No.48/2019, dated 10.12.2019, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

3. It is seen that the detenu is having one adverse case and one ground case and in both the cases, he moved bail applications and both were under consideration by the Court. The Detaining Authority to arrive at the subjective satisfaction, in Paragraph No.4 of the detention order, has considered only the bail petition filed in the ground case in Tamaraikulam Police Station Crime No.165 of 2019 and referred the similar bail order, dated 04.10.2019 in Crl.O.P.(MD) No.14105 of 2019, granted by this Court to one Subash @ John Paul. Indisputably, while arriving at the subjective satisfaction, the bail petition filed in the adverse case was not taken into consideration, which shows lack of application of mind on the part of the Detaining Authority. It is also seen that in the order dated 04.10.2019 in Crl.O.P.(MD) No.14105 of 2019, this Court, after perusing the F.I.R., came to the conclusion that it does not inspire confidence of the Court. Therefore, the similar case relied on by the Detaining Authority is not similar to the case of the detenu.

4. A perusal of the proforma filed by the learned Additional Public Prosecutor would indicate that the detention order was passed on 10.12.2019. As against the same, the petitioner made a representation on 28.12.2019 and the same was received by the Collectorate from the Central Prison on 04.01.2020. The Parawar remarks were called for from the Sponsoring Authority on 06.01.2020. The remarks were received on 23.01.2020 and the report was sent to the Government on 25.01.2020. In between 06.01.2020 and 23.01.2020, there is unexplained delay of nine days, excluding the Government Holidays of seven days, in receiving remarks from the Sponsoring Authority.

5. 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 it is held as follows:

"7. It is a Constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the consideration for the decision to be taken on the representation, the words *as soon as may be*" in Clause (5) of Article 22 convey

<https://hcservices.ecourts.gov.in/hcservices/> the message that the representation should be



considered and disposed of at the earliest. But that does not mean that the authority is preempted from explaining the delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable caused. This position has been well delineated by a Constitution Bench of this Court in *M.M.Abdulla Kunhi v. Union of India*, 1991 (1) SCC (Cri) 613. The following observations of the Bench can profitably be extracted here: (SCC 484, Para 12)

"It is a Constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in Clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and dispose of with a sense of urgency without any avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the Detention Law concerned within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the Constitutional imperative and it would render the continued detention impermissible and illegal."

8. The position, therefore, now is that if delay was caused on account of nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."



6. In the case on hand, as stated supra, the delay of nine days in considering the representation of the detenu has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the grounds stated above by following the decision of the Honourable Apex Court referred supra.

7. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in P.D.No.48/2019, dated 10.12.2019, is set aside. Consequently, the detenu, namely, Siva @ Sivaperuman @ Siva Perumal, son of Pauldurai, aged about 43 years, who is now detained at 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(Records)

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/ /2020

Sub Assistant Registrar(CS)

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 Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
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.



H.C.P.(MD) No.6 of 2020

4. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai-9.

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

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