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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.7 of 2020

Yogambal

...Petitioner/Mother of Detenue

-vs-

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The District Collector and District Magistrate,
Thanjavur, Thanjavur District.

3.The Superintendent of Prison,
Central Prison, Trichy.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records in pursuant to the proceedings of the second respondent in Detention Order in P.D.No.37/2019 dated 14.12.2019 quash the same and consequently direct the respondents to produce the detenu, namely Senthil @ Kasaya Senthil son of Ramu aged 42 years who is now detained in Central Prison, Trichy, before this Court and set him at liberty.

For Petitioner : Mr.M.Subash Babu

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The prayer in the Habeas Corpus Petition is to quash the detention order of the second respondent dated 14.12.2019 passed in P.D.No.37/2019, wherein the petitioner's son namely, Senthil @ Kasaya Senthil, son of Ramu aged about 42 years has been detained under Section 2(e) of the Tamil Nadu Act 14 of 1982 branding him as a "Drug Offender".

2.Mr.M.Subash Babu, learned counsel for the petitioner would argue that the order of detention passed by the second respondent is liable to be quashed on two grounds. Firstly, there is no proper intimation of arrest of the detenu either to the family members of the detenu or his relatives and secondly, there was enormous, inordinate and unexplained delay in disposal of the representation



of the detenu, which is in violation of the procedural safeguards guaranteed under Article 21 and 22 of the Constitution of India.

3.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents, while reiterating the counter affidavit, would submit that the detaining authority, namely, the second respondent herein, after being satisfied with the cogent and relevant materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the order of detention passed by the second respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

4.We have heard the rival submissions and perused the materials available on records.

5.In the matter on hand, the detenu has two adverse cases and in the first adverse case, he was granted bail. Second adverse case was registered on 22.11.2019 and for the ground case, he was arrested by the respondent police on 29.11.2019 and he was remanded to the judicial custody till 13.12.2019 and his remand was extended till 27.12.2019. The bail application filed in the ground case was pending. The detention order does not show that any bail application has been moved in the second adverse case, but the detaining authority referring to the order granted to one Mariammal in Crime No.72/2019, arrived at subjective satisfaction that the detenu likely to be released on bail and he would indulge in similar activities. The order copy in the case of Mariammal which is enclosed at page No.50 of the booklet, shows that she was granted statutory bail under Section 167(2) of Cr.P.C. When the detenu has not moved any bail application in the second adverse case and his bail petition in the ground case was pending, the detaining authority relying upon the bail granted to one Mariammal is not right in coming to the subjective satisfaction that the detenu likely to be granted bail in this case. Therefore, we are convinced that the subjective satisfaction arrived by the detaining authority is not correct which shows non-application of mind on the part of the detaining authority.

6.It is evident from the booklet that in the second adverse case, the arrest was said to have intimated to the brother of the detenu, namely, Purusothaman and the arrest in the ground case was intimated to one Yahambal, the petitioner herein. But no proof has been found in the booklet that the intimation was properly given. It is settled legal position that if the non-intimation of arrest would seriously prejudice the valuable right of the accused in making proper representation to the concerned authority for the order of detention.



7. Further, in the instant case, it is not in dispute that the detenu was detained by the order of the second respondent dated 14.12.2019. Aggrieved over the same, a representation dated 24.12.2019 has been sent to the first respondent and the same was received on 27.12.2019 and remarks were called for on 30.12.2019 and the remarks were received on 24.01.2020. The Deputy Secretary dealt with the matter on 24.01.2020. The concerned Minister dealt with the matter on 28.01.2020 and thereafter, the detenu's representation was rejected on 30.01.2020. It is seen that there was delay of 24 days between 30.12.2019 and 24.01.2020. It is also seen that there are 10 Government holidays and after excluding the same, there is a delay of 14 days in considering the representation of the detenu.

8. 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 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 disposed 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 any 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."

9. In the case on hand, there is absolutely no explanation for the delay of 14 days in considering the representation of the detenu. Therefore, we are of the opinion that the order of detention is liable to be set aside on the reasons stated above.

10. In fine, the order of detention passed by the second respondent, in Detention Order in P.D.No.37/2019 dated 14.12.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Senthil @ Kasaya Senthil son of Ramu aged 42 years now detained at Central Prison, Trichy is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

skn

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.



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2.The District Collector and District Magistrate,
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3.The Superintendent of Prison,
Central Prison, Trichy.

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

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

H.C.P. (MD) No.7 of 2020
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