



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2020

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

H.C.P. (MD) No.16 of 2020

Yogambal

... Petitioner

-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,
Special Prison for Women
Tiruchirappalli.

... 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.41/2019 dated 15.12.2019 quash the same and consequently direct the respondents to produce the detenu, namely Mariammal, W/o Senthil @ Kasaya Senthil aged 40 years who is now detained in Special Prison for Women, Tiruchirappalli, before this Court and set her at liberty.

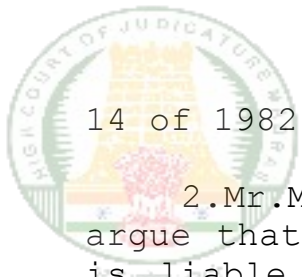
For Petitioner : Mr.M.Subash Babu

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 15.12.2019 passed in P.D.No.41/2019, wherein the petitioner's daughter-in-law namely, Mariammal, wife of Senthil @ Kasaya Senthil, aged about 40 years has been detained under Section 2(e) of the Tamil Nadu Act



14 of 1982 branding her 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 her relatives and secondly, there was enormous, inordinate and unexplained delay in disposal of the representation of the detenu, 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.It is evident from the booklet that in the ground case, arrest of the detenu was said to have been intimated to the husband of the detenu, namely, Senthil @ Kasaya Senthil. But no proof has been found in the booklet that the intimation was properly given. It is settled legal position that non-intimation of arrest of the detenu would cause prejudice to the valuable right of the detenu in making effective representation to the concerned authority for revocation of the order of detention.

6.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 23.01.2020. The Deputy Secretary dealt with the matter on 23.01.2020. 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 23 days between 30.12.2019 and 23.01.2020. It is also seen that there are 10 Government holidays and after excluding the



same, there is a delay of 13 days in considering the representation of the detainee.

7. In the case of **Rajammal vs. State of Tamil Nadu and another (1999 (1) SCC 417)**, the Honourable Apex Court observed and held that it is for the authority concerned to explain the delay, if any, in disposal of the representation and if any delay was caused on account of nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

8. In the case on hand, there is absolutely no explanation for the delay of 13 days in considering the representation of the detainee. Therefore, we are of the opinion that the order of detention is liable to be set aside on the reasons stated above.

9. In fine, the order of detention passed by the second respondent, in Detention Order in D.O.No.41/2019 dated 15.12.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detainee, namely, Mariammal, W/o Senthil @ Kasaya Senthil aged 40 years now detained at Special Prison for Women, Tiruchirappalli, is directed to be released forthwith unless her presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

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.



- To
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Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.
 - 2.The District Collector and District Magistrate,
Thanjavur,
Thanjavur District.
 - 3.The Superintendent,
Special Prison for Women
Tiruchirappalli.
 4. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George,
Chennai
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.16 of 2020
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db(CO)
TR(08.09.2020) 4P 6C