



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2020

CORAM:

WEB COPY

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

H.C.P. (MD) No.57 of 2020

Berlin Jose

... Petitioner

-vs-

1.The Secretary,
Government of Tamil Nadu,
(Public Law and Order) Department,
Fort St. George, Chennai - 9.

2.The District Collector,
District Magistrate,
Madurai District.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus to call for the records of the impugned proceeding of the 2nd respondent herein, in exercise of the powers conferred on him under subsection (1) of Section 3 of Tamil Nadu Act 14 of 1982, r/w the orders issued by the Tamil Nadu Govt. in G.O(D)No.245 Home Prohibition and Excise Department (XVI) Department dated 15.10.2019, under Sec.3(2) of the said Act vide his proceedings in B.C.D.F.G.I.S.S.S.V.No.35/2019 dated 21.11.2019 set aside the same and to direct the production of the petitioner before this Court and set him at liberty.

For Petitioner : Mr.N.Ananthapadmanabhan for
M/s APN. Law Associates

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor



O R D E R

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

This Habeas Corpus Petition has been filed challenging the detention order passed by the second respondent dated 21.11.2019 in B.C.D.F.G.I.S.S.S.V.No.35/2019, wherein the detenu, namely, the petitioner Berlinjose, Male aged about 54 years Son of Muthaiyan has been detained as 'Sexual Offender', as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982. 2.Heard

Mr.A.Ananthapadmanabhan, learned Senior Counsel for the petitioner and Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents and perused the materials available on records.

3.Though several grounds have been raised to assail the impugned detention order, the learned Senior Counsel confines his argument to the ground of failure on the part of the respondents in considering the representation of the petitioner in time and the failure on the part of the respondents intimating the arrest of the detenu to his family members or relatives.

4.Per contra, the learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, submitted that the Detaining Authority has arrived at the subjective satisfaction based on the materials placed by the Sponsoring Authority. He further submitted that the arrest of the detenu has been intimated in accordance with law and the representation of the detenu was also considered and disposed of and there is no infirmity or irregularity in the impugned order of detention passed by the second respondent and hence, prayed for dismissal of the habeas corpus petition.

5.According to the learned counsel for the petitioner, aggrieved over the impugned detention order dated 21.11.2019, representations have been made by the detenu and his wife on 26.11.2019 to the authorities, but they have not been considered in accordance with law and hence, the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India has been violated.

6.Though in the counter affidavit filed by the respondents it is stated that the representation of the petitioner was properly considered and rejected suitably, nothing has been brought on record to substantiate the said contention. It is relevant to note that in the *pro forma* furnished by the Additional Public Prosecutor, it is stated that the representation of the detenu was received by the first respondent on 11.12.2019 and on the same day, remarks were called for. Notwithstanding reminders have been made on 23.01.2020, 21.02.2020, 17.03.2020, 20.05.2020, 24.06.2020 and 18.07.2020, remarks have not been received from the detaining



authority, which would categorically show that the representation of the detenu was not at all considered by the respondents.

7.It is settled principles of law that the authorities have an obligation to consider the representation of the detenu expeditiously and it is for them to explain the delay, if any, in disposal of the representation. In the event of unexplained delay, the detention order is liable to be quashed. It is interesting to note that in this case, representation made on behalf of the detenu is not disputed, but nothing is forthcoming to show it was considered by the authorities. So continuation of detention of the detenu is impermissible in law.

8.Perusal of the page No.35 of the booklet would show that the arrest of the detenu has been intimated to his brother, by name, Rudi, S/o Povurayara. But it is the submission of the learned Senior Counsel for the petitioner that the detenu's father's name is Muthaiyan and hence, Rudi is not at all the brother of the detenu. It is further seen that the intimation has been sent through SMS to the Cell No.8637603740. However, there is no material to show that the said Cell Number belongs to the family members of the detenu or his relatives and the text of the message is also not found place in the booklet.

9.This Court, following the decision of the Honourable Apex Court in the case of **D.K.Basu** (cited supra), in several cases, has consistently held that if there is no proper intimation of arrest of the detenu either to his family members or his relatives, his valuable rights would seriously prejudiced on the sense that they will not have the opportunity to make effective representation to the Authority concerned in time for revocation of the detention order.

10. For the forgoing reasons, the order of detention passed by the second respondent in B.C.D.F.G.I.S.S.S.V.No.35/2019, dated 21.11.2019 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Berlin Jose, Male, aged about 54 years, Son of Muthaiyan, now detained at Central Prison, Madurai is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar(CO)

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/ /2020

Sub Assistant Registrar(CS)



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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,
Government of Tamil Nadu,
(Public Law and Order) Department,
Fort St. George, Chennai - 9.
- 2.The District Collector,
District Magistrate,
Madurai District.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
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.57 of 2020

01.09.2020

SCR(CO)

TR(13.10.2020) 4P 6C