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H.C.P.(MD) No.52 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P.(MD) No.52 of 2020

Rukmani

... Petitioner

-vs-

- 1.The Additional Chief Secretary to Government
Home, Prohibition and Excise (XVI) Department
Secretariat,
Chennai-600 009.
- 2.The District Collector / District Magistrate
Pudukkottai District,
Pudukkottai.
- 3.The Revenue Divisional Officer /Sub Divisional Magistrate
Aranthangi,
Pudukkottai District.
- 4.The Superintendent of Police,
Pudukkottai District,
Pudukkottai.
- 5.The Inspector of Police,
Mimisal Police Station,
Pudukkottai District.
- 6.The Superintendent,
Central Prison,
Tiruchirappalli.

... 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 records relating to the second respondent's impugned detention order in P.D.O.No.84 of 2019 dated 28.11.2019 and set aside the same as illegal and consequently directing the respondents to produce the detenu Mahesh aged about 46 years son of Thirugnanam now confined at Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.Prasana Rajadurai

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

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O R D E R

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

This habeas corpus petition has been filed by the elder sister of the detenu, namely, Mahesh son of Thirugnanam, male aged about 46 years, against the Detention Order made in P.D.O.No.84/2019 dated 28.11.2019, passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

2. It is submitted by Mr.Prasana Rajadurai, learned counsel for the petitioner that the impugned order of the second respondent is liable to be set aside on two grounds. Firstly, there was no proper intimation of arrest of the detenu in the ground case. It is the submission of the learned counsel for the petitioner that no details have been furnished particularly the cell number mentioned at page No.37, whether it belongs to the family members of the detenu or his relatives. It is also stated that the text of the SMS also not found in the booklet. Secondly, there is unexplained delay in considering the representation of the petitioner, which would vitiate the detention order. In this regard, the learned counsel has placed reliance upon 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**.

3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, would submit that the Detaining Authority, on being satisfied with the materials placed by the Sponsoring Authority, has rightly passed the detention order only to prevent the detenu from indulging in similar offences in future. It is contended by the learned Additional Public Prosecutor that the delay has been properly explained and the delay caused no prejudice to the detenu and hence, 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, even according to the sponsoring authority, the arrest of the detenu in the ground case was intimated to the cell No.9965088430 through SMS, however, there is no record to show whether the cell number belongs to the family members of the detenu or his relatives. It is also seen from the records that the text of the SMS has not been stated in the booklet. This Court consistently held that failure to intimate the arrest of the detenu to his family members would deprive his valuable rights to make effective representation to the concerned authority for revocation of the order of detention and non-mentioning of the text intimation in the booklet would also vitiate the order of detention.



6. Furthermore, it is seen from the proforma furnished by the learned Additional Public Prosecutor that the representation of the petitioner, dated 06.01.2020 was received on 13.01.2020. Remarks were called for on 13.01.2020 and it was received on 06.02.2020. The Deputy Secretary dealt with the matter on 06.02.2020. The concerned Minister dealt with the matter on 17.02.2020 and the representation came to be rejected on 18.02.2020. It is seen that in between 13.01.2020 and 06.02.2020, there is inordinate and unexplained delay of 15 days, after excluding the Government Holidays of 9 days, in considering the detenu's representation.

7. The Honourable Apex Court in the case of **Rajammal** (cited supra), has 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 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



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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."

8. In the case on hand, as stated supra, the delay of 15 days 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 of non-application of mind and delay by following the decisions of the Honourable Apex Court referred supra.

9. In view of that, the order of detention passed by the second respondent, in P.D.O.No.84 of 2019 dated 28.11.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu namely, Mahesh aged about 46 years son of Thirugnanam who is now detained at the Central Prison, Tiruchirappalli is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (Recdrds)

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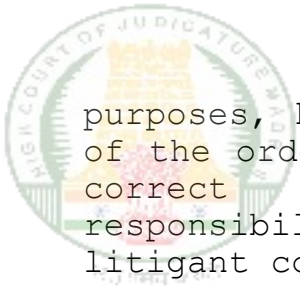
Sub Assistant Registrar(CS)

Skn

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 - 6.The Superintendent,
Central Prison,
Tiruchirappalli.
 - 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.NA. PALANIYANDI, Advocate (SR-13407[F]dated 31/07/2020)

H.C.P. (MD) No.52 of 2020
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VB (21.08.2020) 5P 9C