



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.67 of 2020

WEB COPY

K.Nagaraj ... Petitioner/Husband of the detenue

-vs-

1.The Additional Chief Secretary to Government
Prohibition and Excise Department
Fort St.George
Chennai-600 009

2.The District Collector / District Magistrate
Trichy District
Trichy

3.The Superintendent of Prison
Special Prison for Woman
Trichy-08

... 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 order in TPDA No.1056 (Cr.M.P.No.62/2019), dated 04.10.2019, passed by the second respondent and quash the same and consequently direct the respondent to set the detenue Mrs.Mahalakshmi, at liberty.

For Petitioner : Mr.A.K.Manickam

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

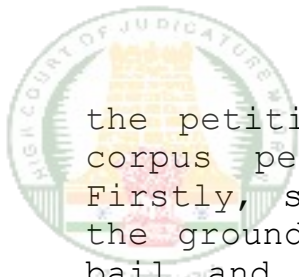
O R D E R

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

This habeas corpus petition has been filed by the husband of the detenue, namely, Mahalakshmi, aged 36 years, against the detention order in TPDA No.1056 (Cr.M.P.No.62/2019), dated 04.10.2019, passed by the second respondent, branding her as "Drug-Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

2. It is submitted by Mr.A.K.Manickam, learned counsel for

<https://hcservices.ecourts.gov.in/hcservices/>



the petitioner that the detention order impugned in this habeas corpus petition is liable to be set aside on two grounds. Firstly, since the detainee has not filed any bail application in the ground, there is no likelihood of the detainee coming out on bail and indulging in similar offences in future, hence, the subjective satisfaction reached by the Detaining Authority cannot be countenanced. The learned counsel has placed reliance upon the decision of the Honourable Apex Court in the case of **Rekha vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244**. 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 and also taking into consideration the fact that the detainee is involved in three adverse cases, has rightly passed the detention order only to prevent the detainee 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 detainee and hence, prayed for dismissal of the habeas corpus petition.

4. On perusal of the detention order, it is seen that in Paragraph No.5 of the detention order, the Detaining Authority has stated that the detainee has not filed any bail petition in the ground case. However, the Detaining Authority has stated that in a similar case registered in Tiruverumbur Police Station Crime No.226 of 2019, one Madhan alias Madhankumar was granted bail by the learned Additional District and Sessions Judge / Presiding Officer, Special Court for EC Act and NDPS Act Cases, Pudukkottai, by order dated 25.07.2019 in Cr.M.P.No.230 of 2019. When there is no bail petition pending in the ground case, there is absolutely no imminent possibility of the detainee coming out on bail.

5. The Honourable Apex Court in the case of **Rekha** (cited supra) has held as follows:

"7. A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in



respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that "in similar cases bails were granted by the courts". In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order.

...

...

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.

...

...

36. It has been held that the history of liberty is the history of procedural safeguards. (See Kameleshkumar Ishwardas Patel v. Union of India [(1995) 4 SCC 51 : 1995 SCC (Cri) 643] vide para 49.) These procedural safeguards are required to be zealously watched and enforced by the court and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu. As observed in Rattan Singh v. State of Punjab [(1981) 4 SCC 481 : 1981 SCC (Cri) 853]: (SCC p.483, para 4)

"4. ... May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and



if freedom and liberty are to have any meaning in our democratic set up, it is essential that at least those safeguards are not denied to the detenus."

...

...

WEB COPY

39. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of judicial vigilance that is needed was aptly described in the following words in Thomas Pelham Dale case : [(1881) 6 QBD 376 (CA)] (QBD p.461)

"Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue."

6. Furthermore, it is seen from the proforma furnished by the learned Additional Public Prosecutor that the representation of the petitioner, dated 15.10.2019, was received on 17.10.2019. Remarks were called for on the same day i.e. on 17.10.2019 and it was received on 27.11.2019. The Deputy Secretary dealt with the matter on 28.11.2019. The concerned Minister dealt with the matter on 14.12.2019 and the representation came to be rejected on 16.12.2019. It is seen that in between 28.11.2019 and 14.12.2019, there is inordinate and unexplained delay of eleven days, after excluding the Government Holidays of four days, in considering the petitioner'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 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 eleven 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 fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in TPDA No.1056 (Cr.M.P.No.62/2019), dated 04.10.2019, is set aside. Consequently, the detainee, namely, Mahalakshmi, wife of Nagaraj, aged about 36 years, who is now detained at the Special Prison for Women, 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-II)

// True Copy //

/ /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.

krk

To:

- 1.The Additional Chief Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The District Collector / District Magistrate,
Trichy District, Trichy.



3.The Superintendent of Prison,
Special Prison for Woman,
Trichy-08.

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

H.C.P. (MD) No.67 of 2020
27.07.2020

KM (03.08.2020) 7P 5C