



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.77 of 2020

WEB COPY

Sankar @ Sankar Ganesh(33)

S/o.Balakrishnan

... Petitioner/Detenu

-VS-

1.The State of Tamil Nadu

rep. by the Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Fort. St. George, Chennai - 9.

2.The District Collector and District Magistrate,

Office of the District Collector and District Magistrate,
Thanjavur District, Thanjavur.

3.The Superintendent,

Central Prison,
Tiruchirappalli,

Tiruchirappalli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus to call for the records relating to the impugned order of Detention made in P.D.No.1 / 2020 dated 09.01.2020 on the file of the District Collector and District Magistrate, Thanjavur District, the second respondent herein, branding the detenu by name, Sankar @ Sankar Ganesh S/o Balakrishnan aged about 33 years, as "Boot-Legger" who is now confined in Central Prison, Tiruchirappalli, Tiruchirappalli District and quash the impugned order of detention and set him at liberty by producing him before this Court.

For Petitioner : Mr.A.Thiruvadikumar

For Respondents : Mr.V.Neelakandan

Additional Public Prosecutor

O R D E R

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

The present Habeas Corpus Petition has been filed to assail the detention order passed by the second respondent in P.D.No.01/2020 dated 09.01.2020, wherein the petitioner/detenu, namely, Sankar @ Sankar Ganesh, aged about 33 years son of Balakrishnan has been



detained as 'Boot-Legger' as contemplated under Section 2(b) of the Tamil Nadu Act, 14 of 1982.

2. Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 09.01.2020 Mr.A.Thiruvadikumar, learned counsel for the petitioner would contend that the procedural safeguards guaranteed under Article 21 and 22 of the Constitution of India has been violated and there is an inordinate and unexplained delay in considering the representation of the petitioner and on this sole ground, the detention order is liable to be set aside.

3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the 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 instant case, it is not in dispute that the detenu was detained by the order of the second respondent dated 09.01.2020. Aggrieved over the same, a representation dated 18.01.2020 has been sent to the first respondent and the same was received on 27.01.2020. Remarks were called for on 28.01.2020. However, the remarks were received on 02.03.2020. The Deputy Secretary dealt with the matter on 02.03.2020. The concerned Minister dealt with the matter on 16.03.2020 and thereafter, the detenu's representation was rejected on 17.03.2020. It is seen that there was delay of 33 days between 28.01.2020 and 02.03.2020. It is also seen that there are 9 Government Holiday and after excluding the same, there is a delay of 22 days in considering the representation of the detenu.

6. 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



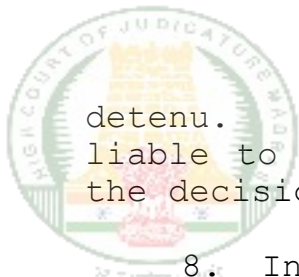
message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is preempted from explaining the delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due 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 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."

7. In the case on hand, there is absolutely no explanation for the delay of 22 days in considering the representation of the

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



detenu. Hence, in our considered view, the detention order is liable to be set aside solely on the ground of delay by following the decision of the Honourable Apex Court referred supra.

8. In fine, the order of detention passed by the second respondent, in P.D.No.1 / 2020 dated 09.01.2020 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Sankar @ Sankar Ganesh S/o Balakrishnan aged about 33 years, now detained at 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 ()

// 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

- 1.The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Fort. St. George, Chennai - 9.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Thanjavur District, Thanjavur.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli, Tiruchirappalli District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.77 of 2020

29.07.2020

SPU (12.08.2020) 5P 6C

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