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H.C.P.(MD) No.112 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2020

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**

**and**

**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

**H.C.P. (MD) No.112 of 2020**

Bharjana

... Petitioner/Wife of Detenu

-vs-

1.The Additional Secretary to the Government,  
Home, Prohibition and Excise Department,  
Secretariat,  
Chennai - 600 009.

2.The District Collector and District Magistrate,  
Karur District,  
Karur.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records pertaining to the impugned detention order passed by the second respondent made in his proceedings in Cr.M.P.No.28/2019 dated 24.12.2019 in detaining the detenu under Section 2(e) of the Tamil Nadu Act 14 of 1982 as a Drug Offender and quash the same and direct the respondents to produce the detenu namely, Kandhan @ Kandhasamy S/o Muthu, Male aged about 38 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

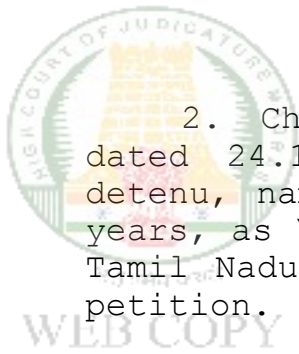
For Petitioner : Mr.R.Alagianambi

For Respondents : Mr.V.Neelakandan  
Additional Public Prosecutor

**O R D E R**

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

Heard Mr.R.Alagianambi learned counsel for the petitioner and Mr.V.Neelakandan, learned Additional Public Prosecutor for the respondents and perused the materials available on record.



2. Challenging the order of detention in Cr.M.P.No.28/2019 dated 24.12.2019 passed by the second respondent, branding the detenu, namely, Kandhan @ Kandhasamy S/o Muthu, male aged about 38 years, as "Drug Offender" as contemplated under Section 3(1) of the Tamil Nadu Act 14 of 1982, his wife has filed this habeas corpus petition.

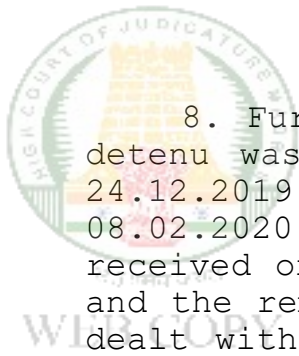
3. The learned counsel for the petitioner would submit that the detention order impugned in this habeas corpus petition is liable to be set aside on two grounds. Firstly, there was no proper intimation of arrest of the detenu in the ground case. He would further submit that no details have been furnished particularly the cell number mentioned at paragraph 76 of the booklet, 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. In this regard, the learned counsel has placed reliance upon the decision of the Honourable Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**. 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**.

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 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. We have heard the rival submissions and perused the materials available on records.

6. Perusal of the arrest intimation form available at Page No.76 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell No.7548854856. 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.

7. 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.



8. Further, in the instant case, it is not in dispute that the detenu was detained by the order of the second respondent, dated 24.12.2019. Aggrieved over the same, a representation dated 08.02.2020 has been sent to the first respondent and the same was received on 11.02.2020 and on the same day, remarks were called for and the remarks were received on 26.02.2020. The Deputy Secretary dealt with the matter on 26.02.2020. The concerned Minister dealt with the matter on 16.03.2019 and thereafter, the detenu's representation was rejected on 17.03.2020. It is seen that there was delay of 15 days between 11.02.2020 to 26.02.2020. It is also seen that there are 4 Government holidays and after excluding the same, there is a delay of 11 days in considering the representation of the detenu.

9. 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



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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."

10. In the case on hand, there is absolutely no explanation for the delay of 11 days in considering the representation of the detenu. Hence, in our considered view, the detention order is liable to be set aside on the ground of delay also by following the decision of the Honourable Apex Court referred supra.

11. In view of that, the order of detention passed by the second respondent, in Cr.M.P.No.28/2019 dated 24.12.2019, is set aside and the habeas corpus petition is allowed. Consequently, the detenu, namely, Kandhan @ Kandhasamy S/o Muthu, male aged about 38 years, who is 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/-

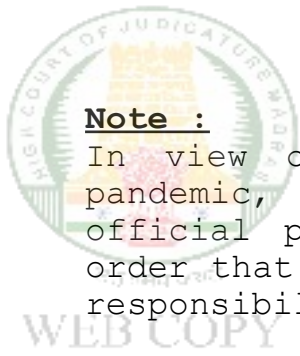
Assistant Registrar

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/ /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 Secretary to the Government,  
Home, Prohibition and Excise Department,  
Secretariat,  
Chennai - 600 009.
- 2.The District Collector and District Magistrate,  
Karur District,  
Karur.
- 3.The Superintendent of Prison,  
Central Prison,  
Tiruchirappalli.
4. The Joint Secretary to Government,  
Public (Law and Order)  
Secretariat,  
Chennai - 600 009.
- 5.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.R. ALAGIA NAMBI, Advocate SR-13685.

**H.C.P. (MD) No.112 of 2020**  
**04.08.2020**

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