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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P.(MD) No.163 of 2020

Pavithra

... Petitioner

-vs-

1.State of Tamil Nadu

rep. by its Additional Chief Secretary to Government,
Govt. of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

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

3.The Superintendent,
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 records pertaining to the proceedings of the second respondent made in his proceedings in Detention Order No.10/2020 dated 05.02.2020 and quash the same and set the petitioner's husband by name "Nagaraj S/o Subbaiah, aged about 31 years at liberty from Central Prison, Madurai/3rd respondent.

For Petitioner : Mr.M.Jegadeesh Pandian

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

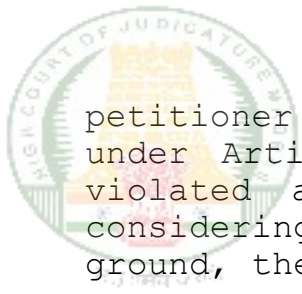
O R D E R

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

The Habeas Corpus Petition has been filed by the wife of the detenu, namely, Nagaraj, Son of Subbaiah, Male aged about 31 years, who has been branded as "Drug Offender" by the second respondent in Detention Order No.10/2020, dated 05.02.2020, as contemplated under Section 2(e) 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 05.02.2020, Mr.M.Jagedeesh Pandian, learned counsel for the

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petitioner would contend that the procedural safeguards guaranteed under Articles 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.

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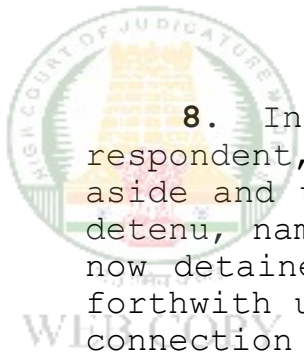
3.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the cogent materials produced by the sponsoring authority, has passed the detention order only 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 05.02.2020. Aggrieved over the same, a representation dated 17.02.2020 has been sent to the first respondent and the same was received on 24.02.2020 and on the same day, remarks were called for. But the remarks were received on 04.03.2020. The Deputy Secretary dealt with the matter on 05.03.2020. The concerned Minister dealt with the matter on 16.03.2020 and thereafter, the detenu's representation was rejected on 16.03.2020. It is seen that there was delay of 11 days between 05.03.2020 and 16.03.2020. It is also seen that there are 4 Government holidays and after excluding the same, there is a delay of 7 days in considering the representation of the detenu.

6.In the case of **Rajammal vs. State of Tamil Nadu and another (1999 (1) SCC 417)** the Honourable Apex Court observed and held that it is for the authority concerned to explain the delay, if any, in disposal of the representation and if any delay was caused on account of nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

7. In the case on hand, there is absolutely no explanation for the delay of 7 days in considering the representation of the 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 Detention Order No.10/2020 dated 05.02.2020, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Nagaraj, Son of Subbaiah, Male aged about 31 years, now detained at Madurai Central Prison, 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)

// 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,
Govt. of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The District Collector and District Magistrate,
Dindigul District, Dindigul.
- 3.The Superintendent,
Central Prison,
Madurai.
- 4.The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.163 of 2020

28.09.2020

KG (CO)

AP(03/11/2020) 3P 6C

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