



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P.(MD) No.172 of 2020

Arasan

... Petitioner/detenu

-vs-

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

2.The District Collector and District Magistrate
Office of the District Collector and District Magistrate,
Theni District,Theni.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... 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 entire records connected with the Detention Order of the second respondent in Detention Order No.3 of 2020, dated 13.2.2020 and quash the same and direct the respondents to produce the body or person of the detenu by name Arasan, son of Karuthakannan, aged about 40 years, now detained as 'Drug Offender' at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

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

The detenu is the Petitioner. Challenge in the Habeas Corpus Petition is to the order of the second respondent, dated 13.2.2020 passed in D.O.No.03 of 2020, wherein, the detenu has been branded as 'Drug Offender', as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.



2. Heard Mr.R.Alagumani, learned counsel appearing for the Petitioner and Mr.V.Neelakandan, learned Additional Public Prosecutor, appearing for the respondents and perused the materials available on record.

3. Though several grounds are raised to assail the impugned Detention Order, it is mainly contended by the learned counsel for the Petitioner that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India have not been followed in this case and the representation of the Petitioner was not considered and there is unexplained and inordinate delay in disposal of the petitioner's representation, which would vitiate the impugned order of detention.

4. Mr.V.Neelakandan, learned Additional Public Prosecutor, on instructions, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. It is also stated that even if there is any delay in disposal of the representation, it has not caused any prejudice to the rights of the detenu and hence, prayed for dismissal of the habeas corpus petition.

5. It is seen from the pro-forma filed by the learned Additional Public Prosecutor appearing for the respondents that as against the Detention Order dated 13.2.2020, the petitioner made a representation to the first respondent on 24.02.2020 and it was received on 27.02.2020. Remarks were called for on 28.02.2020 and it was received only on 19.03.2020. The matter was under the consideration of the Under Secretary, Deputy Secretary and the concerned Minister and the representation was finally rejected on 23.3.2020. It is seen that in between 28.02.2020 and 19.03.2020, there was a delay of 20 days, after deducting 6 Government Holidays, delay of 14 days have not been explained by the respondents.

6. At this juncture, it is useful to refer 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**, wherein the Apex Court has 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, as stated supra, the delay of 14 days in considering the representation of the petitioner has not been properly explained by the respondents. 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 Habeas Corpus Petition is allowed. The detention order in Detention Order No.03 of 2020, dated 13.02.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Arasan, son of Karuthakannan, aged about 40 years, who is now detained at Central Prison, Madurai 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)

vsn

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.

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4. The Additional Public Prosecutor,
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Madurai.

ORDER MADE IN
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