



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.300 of 2020

Vaishnavi

... Petitioner/wife of the detenu

-vs-

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

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

3.The Inspector of Police,
NIB CID, Theni,
Theni District.

4.The Superintendent of Prison,
Central Prison,
Madurai.

... 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 the Detention Order passed by the second respondent in Detention Order No.6/2020, dated 19.2.2020 and to quash the same and to direct the respondents to produce the detenu Thiru.Rajasekaran, son of Eswaran, male, aged 30 years, who is detained at Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.K.Mahendran

For Respondents : Mr.R.Anandharaj
Additional Public Prosecutor

O R D E R

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

The detention order passed by the second respondent on 19.2.2020 vide Detention Order No.6 of 2020 is under challenge in this Habeas Corpus Petition by the wife of the detenu namely,

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



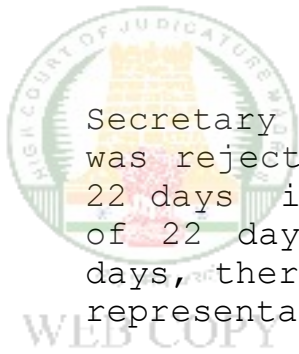
Rajasekaran, aged about 30 years, who has been branded as Drug Offender.

2.Mr.K.Mahendran, learned counsel appearing for the Petitioner would argue that the detention order is liable to be quashed on three grounds:(a) the remand order of the detenu, dated 30.1.2020 was not furnished in the vernacular language of the detenu (b)Page Nos.14,56 and 58 in the booklet are illegible which deprive the valuable right of the detenu from making effective representation for revocation of the detention Order. (c) there is an unexplained and unordinate delay in disposal of the representation of the detenu, dated 10.8.2020.

3.Mr.R.Anandharaj, learned Additional Public Prosecutor while reiterating the averments contained in the counter affidavit filed by the second respondent would argue that the detenu has involved in two criminal cases of similar nature and that too, in the ground case, he was found in possession of 24 kgs of ganja. It is the submission of the learned Additional Public Prosecutor that the Detaining Authority, the second respondent herein after having found satisfied with the relevant and cogent materials produced by the sponsoring authority, passed the detention order only to prevent the detenu from indulging in similar offence in future and from creating law and order problem and as such, there is no illegality or irregularity in the impugned detention order. It is also contended that the representation was disposed of as expeditiously as possible and there is no delay and 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.

4.A perusal of the booklet would reveal that the detenu was arrested on 30.1.2020 in the ground case in Crime No.12 of 2020, on the file of the Theni NIB CID and he was remanded to judicial custody by the order of the learned Judicial Magistrate, Theni on 30.1.2020, but the translated copy of the remand order is not found in the booklet furnished to the detenu. It is further seen that Page Nos.14,56 and 58 are illegible. So we find force in the submission of the learned counsel for the Petitioner and in view of the fact that the illegible copies of the documents are enclosed in the booklet, the detenu was not in a position to make effective representation for revocation of the detention order.

5.The performa furnished by the learned Additional Public Prosecutor would show that the detenu made a representation on 10.8.2020 to the first respondent and the same was received by the first respondent on 9.10.2020. Though remarks were called for on the same day, remarks were received by the authorities only on 2.11.2020. The file was circulated to the Under Secretary, Deputy



Secretary and the concerned Minister and eventually, the same was rejected on 6.11.2020. It is seen that there is a delay of 22 days in between 9.10.2020 and 2.11.2020 and there was a delay of 22 days and after excluding the Government Holidays of ten days, there was a delay of 12 days in considering the petitioner's representation, which remains unexplained 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 12 days in considering the representation of the petitioner remains unexplained 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 and based on the other grounds as stated supra.

8. In fine, the Habeas Corpus Petition is allowed. The detention order in Detention Order No. 6 of 2020, dated 19.02.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Rajasekaran, son of Eswaran, aged about 30 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 (CO)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

vsn

Note :

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the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.
- 2.The Joint Secretary to Government
Public(Law and Order)Department,
Fort.St.George, Chennai-9.
- 3.The District Collector and District Magistrate,
Theni District,
Theni.
- 4.The Inspector of Police,
NIB CID, Theni,
Theni District.
- 5.The Superintendent of Prison,
Central Prison,
Madurai.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
H.C.P. (MD) No.300 of 2020
11.11.2020

NA (CO)
KM (23.11.2020) 4P 7C