



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P.(MD) No.309 of 2020

Arumugam

... Petitioner/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,
Thoothukudi District,
Thoothukudi.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... 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 passed in H.S(M)Confdl.No.24 of 2020, dated 19.3.2020 on the file of the second respondent and to quash the same and to direct the respondents to produce the detenu namely, Arumugam, aged about 45 years, son of Velaiah, now detained at the Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

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

This Habeas Corpus Petition has been filed by the detenu himself challenging the detention order passed by the second

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respondent, dated 19.3.2020 in H.S(M)Confdl.No.24 of 2020, branding him as 'Sexual Offender', as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982.

2.Mr.N.Pragalathan, learned counsel appearing for the Petitioner would argue that the impugned Detention Order is assailed on three grounds. Firstly, the booklet and the material documents have not been supplied to the detenu in accordance with Section 8 of the Act.Secondly, there was an inordinate and unexplained delay in considering the representation of the petitioner and thirdly, there is lack of application of mind on the part of the Detaining Authority, who has passed the Detention Order.

3.On the other hand, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents, on instructions, would submit that the second respondent chose to pass the Detention Order after having satisfied with the materials supplied by the Sponsoring Authority. It is the submission of the learned Additional Public Prosecutor that the provisions of the relevant Act has been strictly followed by the Detaining Authority and there is no lapse on his part at the time of passing the Detention Order. It is further contended that the representation of the detenu has been disposed of within the reasonable time and there is no delay in considering the representation 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.Heard both sides and perused the materials available on record.

5.From the perusal of the records, it is seen that the detenu was arrested in Crime No.5 of 2020, on the file of Pudukkottai All Women Police Station on 20.2.2020 for the offence under Sections 376 and 506(ii) IPC and Section 4 of Tamil Nadu Prevention of Women Harassment Act. The Detention Order came to be passed on 19.3.2020 and the booklet and other relevant materials were admittedly served to the detenu only on 19.5.2020. Section 8 of the Act stipulates that materials have to be served on the detenu within a period of five days, however, in this case, the materials have been served to the detenu only after a lapse of 61 days.

6. Further, in the instant case, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 21.05.2020 and it was received on 04.06.2020. Remarks were called for on the same day i.e. 04.06.2020 and it was received on 06.06.2020. The Deputy Secretary dealt with the matter on 08..06.2020. The concerned Minister dealt with the matter on 30.06.2020 and the representation was rejected on 30.06.2020. It is seen that in between



08.06.2020 and 30.06.2020, there was a delay of 22 days, after excluding the Government Holidays of 6 days, there was a delay of 16 days in considering the petitioner's representation.

7. 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.

8. Further, as stated supra, the detenu involved in IPC offences and also under the provisions of TNPHW Act, but in paragraph 5 of the Detention Order, it has been stated that he is involved in POCSO Act which shows the lack of application of mind on the part of the Detaining Authority while reaching the subjective satisfaction. Hence, in our considered view, the detention order is liable to be set aside on the grounds stated supra.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in Detention Order H.S(M)confdl.No.24 of 2020, dated 19.03.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Arumugam, son of Velaiah, aged about 45 years, who is now detained at Central Prison, Palayamkottai is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-I)

// 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.



To:

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

ORDER MADE IN
H.C.P. (MD) No.309 of 2020
09.12.2020

SS (CO)
CS (21.12.2020) 4P 6C