



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.312 of 2020

WEB COPY

Rajkumar @ Vellaiyan

... Petitioner

-vs-

1.The State of Tamil Nadu,

Rep.by the Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Fort. St. George,
Chennai-9.

2.The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.

3.The Superintendent,
Central Prison,
Tiruchirappalli,
Tiruchirappalli 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 records relating to the Impugned Order of Detention made in P.D.No.12/2020 dated 06.03.2020 on the file of the District Collector and District Magistrate, Thanjavur District, the second respondent herein, branding the detenu by name Rajkumar @ Vellaiyan, S/o.Chandrasekaran, aged about 33 years, as "Drug Offender" who is now confined in Central Prison, Tiruchirappalli, Tiruchirappalli District and quash the impugned order of detention and set him at liberty by producing him before this Hon'ble Court.

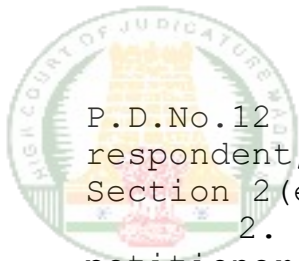
For Petitioner : Mr.A.Thiruvadi Kumar

For Respondents : Mr.V.Neelakandan
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, namely, Rajkumar @ Vellaiyan, son of Chandrasekaran, aged about 33 years, challenging the impugned order of detention made in



P.D.No.12 of 2020, dated 06.03.2020, passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

2. Mr.A.Thiruvadi Kumar, learned counsel appearing for the petitioner would submit that the detention order impugned in the habeas corpus petition has liable to be quashed on the following grounds:-

(i) firstly, on the ground of violation of the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India. It is contended by the learned counsel appearing for the petitioner that there is unexplained and inordinate delay in considering the representation of the detenu.

(ii) secondly, it is contended that similar case details referred by the detaining authority is not similar to the case of the petitioner and:

(iii) thirdly, the arrest of the detenu has not been properly intimated either to the family members or to the relatives of the detenu, which deprived the valuable rights of the detenu to make proper representation for revocation of the detention order.

3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, while reiterating the counter filed by the second respondent, would submit that the impugned detention order has been passed by the second respondent after having satisfied with the materials furnished by the sponsoring authority. It is the further submission of the learned Additional Public Prosecutor that subjective satisfaction has been reached by the detaining authority, after considering the quantity involved in the ground case and the arrest of the detenu has been informed as per law.

4. According to the learned Additional Public Prosecutor, there is no delay in disposal of the representation of the detenu 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.

5. In the instant case, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the detenu made a representation to the first respondent on 18.04.2020 and it was received on 07.05.2020. Remarks were called for on the same day i.e., on 07.05.2020 and it was received by the first respondent only on 26.06.2020. The Deputy Secretary dealt with the matter on 26.06.2020. The concerned Minister dealt with the matter on 22.07.2020 and the representation came to be rejected on 23.07.2020. It is seen that in between 07.05.2020 and 26.06.2020, there was a delay of 49 days, after excluding the Government Holidays of 13 days, there was a delay of 36 days in considering the petitioner's representation has not been properly explained by the respondents either in the counter affidavit or during the course of the



6. A perusal of the detention order would show that while arriving for a subject to satisfaction, the second respondent has referred the bail granted to the accused in Cr.No.72 of 2019 on the file of the Inspector of Police, Kumbakonam Taluk Police Station. The learned Additional District and Sessions Judge, Thanjavur granted bail to the accused in Cr.M.P.No.141 of 2019 on the ground that the investigating officer failed to file a charge-sheet within the statutory period and hence, the accused in that case was entitled for a statutory bail under Section 167(2) Cr.P.C.

7. It is to be noted that, in similar case referred by the detaining authority, the quantity involved in that case was only 1.250 Kgs. But in the present case, it is alleged by the respondents that the accused were found in possession of 22 kgs of Ganja. So, we find force in the submission of the learned counsel appearing for the petitioner.

8. It is seen from the arrest intimation form enclosed in the booklet at Page-17 would reveal that the arrest of the detenu was said to have been intimated to his mother, namely, Hemalatha through Cell Phone No.9952148771. However, nothing is found in the booklet to show that the said Cell Number belongs to his mother. Therefore, we are of the considered view that there is no proper intimation of arrest of the detenu to his wife or his relatives.

9. In the light of the above facts and circumstances, we are convinced that the impugned detention order would not stand to the scrutiny of this Court and the same is, therefore, liable to be set aside.

10. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in Detention Order in P.D.No.12 of 2020, dated 06.03.2020, is set aside. Consequently, the detenu, namely, Rajkumar Alias Vellaiyan, son of Chandrasekaran, aged 33 years, who is now 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 / proceedings.

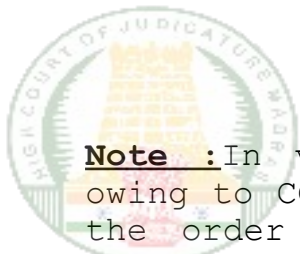
Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



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,
Home, Prohibition & Excise Department,
Fort. St. George,
Chennai-9.
- 2.The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli,
Tiruchirappalli District.
4. The Joint Secretay to Government,
Public (Law & Order)
Fort St. George, Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.A. THIRUVADIKUMAR, Advocate (SR-18054[F] dated 25/09/2020)

ORDER MADE IN
H.C.P. (MD) No.312 of 2020
23.09.2020

VB (07.10.2020) 4P 7C