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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.353 of 2020

Pitchammal

... Petitioner

-vs-

1.The Secretary to Government

Home (Prohibition and Excise Department)

St.George Fort, Chennai

2.The District Collector cum District Magistrate

Thoothukudi District

3.The Superintendent

Central Prison, Palayamkottai

Tirunelveli District

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus call for the records relating to the detention order passed by the second respondent vide H.S.(M) Confdl.No.21/20, dated 13.03.2020 and set aside the same and consequently direct the respondents to produce the detenu namely Kandasamy @ Kumar, son of Sudalai Thevar, aged about 37 years, before this Court now he is detained at Central Prison, Palayamkottai and set him at liberty.

For Petitioner : Mr.A.Balakrishnan

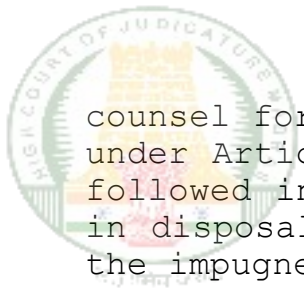
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

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

This habeas corpus petition has been filed by the wife of the detenu, namely, Kandasamy @ Kumar, son of Sudalai Thevar, aged about 37 years, against the detention order passed by the second respondent, in H.S.(M) Confdl.No.21/20, dated 13.03.2020, branding him as "Sand Offender" as contemplated under Section 2(gg) of Tamil Nadu Act, 14 of 1982.

2. Mr.A.Balakrishnan, learned counsel for the petitioner, would argue that even though the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representation. It is submitted 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 there is unexplained and inordinate delay in disposal of the petitioner's representation, which would vitiate the impugned order of detention.

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3. 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.

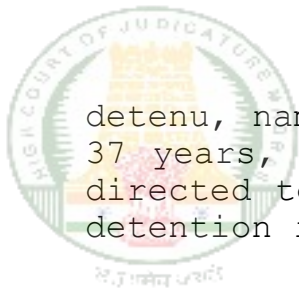
4. Heard both sides and perused the materials available on record.

5. 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 24.03.2020 and it was received on 04.05.2020. Remarks were called for on the same day i.e.04.05.2020 and it was received on 14.05.2020. The Deputy Secretary dealt with the matter on the same day i.e.14.05.2020. The concerned Minister dealt with the matter on 25.05.2020 and the representation came to be rejected on 26.05.2020. It is seen that in between 04.05.2020 and 14.05.2020, there was a delay of ten days, after excluding the Government Holidays of Nil, in considering the petitioner's representation.

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 ten 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 order of detention passed by the second respondent, in H.S.(M) Confdl No.21/20, dated 13.03.2020, is set aside. Consequently, the



detenu, namely, Kandasamy @ Kumar, son of Sudalai Thevar, aged about 37 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.

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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.

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To:

- 1.The Secretary to Government,
Home (Prohibition and Excise Department),
St.George Fort, Chennai.
- 2.The District Collector cum District Magistrate,
Thoothukudi District.
- 3.The Superintendent,
Central Prison, Palayamkottai,
Tirunelveli 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.

H.C.P. (MD) No.353 of 2020
28.09.2020

VB (07.10.2020) 3P 6C