



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2020

CORAM:

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

H.C.P.(MD) No.357 of 2020

Selvin @ Selvam @ Soosai
Iruthaya Selvam

... Petitioner/detenu

-vs-

1.The State of Tamil Nadu,
Represented by Principal Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Secretariat, Fort St.George, Chennai.

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

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order passed by the 2nd respondent in H.S.(M)confdl.No.77/19, dated 26/12/2019 and quash the same as illegal and direct the respondents to produce the body and person of the petitioner / detenu by name Selvin @ Selvam @ Soosai Iruthaya Selvam, son of Anthonymuthu, aged about 60 years, resident of Door No.293, Ambedkar Statue Opposite, Sivanthakulam Road, Thoothukudi District, who is detained as 'Drug Offender' at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor



O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

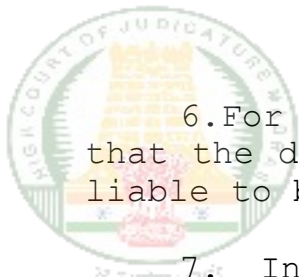
Challenge in the present Habeas Corpus Petition is the detention order of the second respondent, dated 26.12.2019, passed in H.S.M.Confdl.No.77 of 2019, wherein the petitioner has been detained branding him as 'Drug Offender', as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2.It is mainly contended by the learned counsel for the petitioner Mr.P.Ganapathi Subramanian, that the subjective satisfaction arrived by the detaining authority is without any material and there is an unexplained and inordinate delay in disposal of the representation of the petitioner in violation of Article 21 and 22 of the Constitution of India.

3.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents would submit that the detention order came to be passed by the second respondent on satisfying with the cogent and relevant materials furnished by the detaining authority and also taking note of the antecedents of the petitioner. According to the learned Additional Public Prosecutor, there is no illegality or irregularity in the detention order warranting interference of this Court and the delay has caused no prejudice on the detenu and hence prayed for dismissal of this Habeas Corpus Petition.

4.In the instant case, at paragraph No.7 of the detention order, it has been stated that the detaining authority was aware that the detenu was arrested on 01.12.2019 in the ground case in Crime No.740 of 2019 and he was produced before the learned Judicial Magistrate No.I, Tuticorin and was remanded on 09.12.2019 and the remand order was extended upto 20.12.2019. But the perusal of the booklet shows that nothing is available on record to show the remand order and the extension order. Therefore, we agree with the contention of the learned counsel for the petitioner that the subjective satisfaction has been reached by the detaining authority without any material available on record. It shows lack of application of mind on the part of the detaining authority.

5.It is to be noted that aggrieved over the detention order dated 26.12.2019, a representation dated 13.01.2020 was made and it was received by the respondents on 20.01.2020 and remarks were called for on 21.01.2020 and it was received on 29.01.2020. The file was circulated to the Under Secretary and Deputy Secretary, who dealt with the file on 29.01.2020 and thereafter, it was dealt with by the concerned Minister on 03.02.2020 and it was rejected on 04.02.2020. It is to be seen that in between 21.01.2020 and 29.01.2020, there was a delay of 8 days and after and after excluding 2 Government Holidays, 6 days delay in considering the representation was not explained by the respondents.



6.For the forgoing reasons, we are of the considered opinion that the detention order impugned in this habeas corpus petition is liable to be quashed on the ground as stated supra.

7. In fine, the order of detention passed by the second respondent, in H.S.(M)confdl.No.77/19, dated 26.12.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Selvin @ Selvam @ Soosai Iruthaya Selvam, son of Anthonymuthu, aged about 60 years, 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 (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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,
Home, Prohibition and Excise (XVI) Department,
Secretariat, Fort St.George, Chennai.
- 2.The District Magistrate and
The District Collector,
Thoothukudi District.
- 3.The Superintendent of Prison,
Central Prison, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.357 of 2020

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CS(11.09.2020) 3P 5C