



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.375 of 2020

WEB COPY

Rasu

... Petitioner

-vs-

1.The State of Tamil Nadu
Represented by Additional
Chief Secretary to Government
Home, Prohibition and Exercise Department
Secretariat, Fort St.George, Chennai

2.The District Magistrate and
District Collector
Tiruchirappalli District

3.The Superintendent
Central Prison
Tiruchirappalli

... 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 by the second respondent in Cr.M.P.No.55/2020, dated 08.06.2020 and quash the same as illegal and direct the respondents to produce the body and person of the petitioner's son / detenu by name Kannan, son of Rasu, aged about 26 years, resident of 546, Akkalnayakkanpatti Velur Post, Viralimalai Taluk, Pudukkottai District, who is detained as "Sand Offender" at Central Prison, **(*)Tiruchirappalli**, before this Court and set him at liberty.

For Petitioner : Mr.Ganapathi Subramanian

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 father of the detenu, namely, Kannan, aged about 26 years, challenging the detention order in Cr.M.P.No.55/2020, dated 08.06.2020, passed by the second respondent, branding him as "Sand Offender" as contemplated under Section 2(gg) of Tamil Nadu Act 14 of 1982.



2. Mr.Ganapathi Subramanian, 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.

3. Mr.K.Dinesh Babu, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, 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 and it was received on 24.06.2020. Remarks were called for on 25.06.2020 and it was received on 25.07.2020. The Deputy Secretary dealt with the matter on the same day i.e.25.07.2020. The concerned Minister dealt with the matter on 05.08.2020 and the representation came to be rejected on 07.08.2020. It is seen that in between 25.06.2020 and 05.08.2020, there was a delay of 29 days after excluding the Government Holidays of 11 days, 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 29 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 detention order in Cr.M.P.No.55/2020, dated 08.06.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Kannan, son of Rasu, aged about 26 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.

Sd/-

Assistant Registrar (CO)

**(*)Amended as per order of
this Hon'ble Court dated 16.12.2020**

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

KRK

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 and Exercise Department,
State of Tamil Nadu,
Secretariat, Fort St.George, Chennai.

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

3.The Superintendent,
Central Prison,
Tiruchirappalli.



4.The Joint Secretary to Government,
Public(Law and Order)
Fort.St.George, Chennai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.375 of 2020
30.11.2020

KG (CO)

KM (14.12.2020) 4P 6C

KK (17.12.2020) 4P 6C