



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2020

CORAM:

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

H.C.P. (MD) Nos.385,391,464 and 513 of 2020

- 1.Murugan ... Petitioner/Detenu in H.C.P(MD)No.385 of 2020
2.Kasimayan ... Petitioner/Detenu in H.C.P(MD)No.391 of 2020
3.Saranya ... Petitioner/wife of the Detenu in H.C.P
(MD)No.464 of 2020
4.Suvitha Pertitioner in H.C.P(MD)No.513 of 2020

-vs-

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.
2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Madurai.
3.The Superintendent of Prison,
Madurai Central Prison,
Madurai
... Respondents in H.C.P(MD)Nos.385 and 391 of 2020

H.C.P(MD)No.464 of 2020

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Madurai District.



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

4.The Inspector of Police,
Sindhupatti Police Station,
Madurai District.

.....Respondents

H.C.P (MD)No.513 of 2020

1.The State of Tamil Nadu,
represented by its Secretary to Government,
Home,Prohibition and Exercise Department,
Secretariat, Chennai-9.

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

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

.....Respondents

PRAYER in H.C.P(MD)No.385 of 2020: 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 of the second respondent in No.B.C.D.F.G.I.S.S.S.V.No.11 of 2020, dated 19.6.2020 and to quash the same and to direct the respondents to produce the body or person of the detenu by name Murugan, son of Pinniyappan, aged about 34 years now detained as ''Drug Offender'' at Madurai Central Prison before this Court and set him at liberty forthwith.

PRAYER in H.C.P(MD)No.391 of 2020: 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 of the second respondent in No.B.C.D.F.G.I.S.S.S.V.No.10 of 2020, dated 19.6.2020 and to quash the same and to direct the respondents to produce the body or person of the detenu by name Kasimayan, son of Mokkaayan, aged about 27 years now detained as ''Drug Offender'' at Madurai Central Prison before this Court and set him at liberty forthwith.

PRAYER in H.C.P(MD)No.464 of 2020: 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 in No.B.C.D.F.G.I.S.S.S.V.No.09 of 2020, dated 09.6.2020, on the file of the second respondent and to quash the same and to direct the respondents to produce the body or person of



the Petitioner's husband namely Anand, son of Mayan, aged about 30 years now confined at Central Prison, Madurai before this Court and set him at liberty forthwith.

PRAYER in H.C.P(MD)No.513 of 2020: 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 leading to the detention of the Petitioner's husband Bakkiyaraj under Section 2 of Tamil Nadu Act 14/1982 vide Detention Order, dated 7.7.2020, on the file of the second respondent made in B.C.D.F.G.I.S.S.S.V.No.14 of 2020 and to quash the same as illegal and consequently to direct the respondents to produce the body of the detenu now confined at Central Prison, Madurai before this Court and thereafter set him at liberty.

For Petitioner : Mr.R.Alagumani
in H.C.P(MD)Nos.
385 and 391 of 2020

For Petitioner in H.C.P : Mr.T.Jeyakumar
(MD)No.464 of 2020

For Petitioner in H.C.P : Mr.S.Balasubramanian
(MD)No.513 of 2020

For Respondents : Mr.K.Dinesh Babu,
in all H.C.Ps' Additional Public Prosecutor

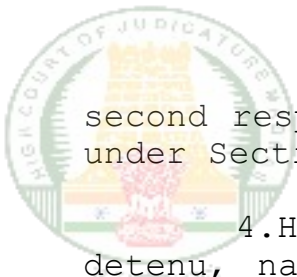
COMMON ORDER

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

H.C.P(MD)No.385 of 2020 has been filed by the detenu, namely, Murugan, son of Pinniyappan, aged about 34 years challenging the detention order in Detention Order in No.B.C.D.F.G.I.S.S.S.V.No.11 of 2020, dated 19.6.2020, passed by the second respondent, branding him as "Drug Offender " as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

2.H.C.P(MD)No.391 of 2020 has been filed by the detenu, namely,Kasimayan, son of Mokkamayan, aged about 27 years challenging the detention order in Detention Order in No.B.C.D.F.G.I.S.S.S.V.No.10 of 2020, dated 19.6.2020, passed by the second respondent, branding him as "Drug Offender " as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

3.H.C.P(MD)No.464 of 2020 has been filed by the wife of the detenu, namely,Anand, son of Mayan, aged about 30 years challenging the detention order in Detention Order in No.B.C.D.F.G.I.S.S.S.V.No.10 of 2020, dated 09.6.2020, passed by the



second respondent, branding him as "Drug Offender " as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

4.H.C.P(MD)No.513 of 2020 has been filed by the wife of the detenu, namely, Bakkiyaraj, son of Chandran, aged about 35 years, challenging the detention order in Detention Order in No.B.C.D.F.G.I.S.S.V.No.14 of 2020, dated 7.7.2020, passed by the second respondent, branding him as "Drug Offender " as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

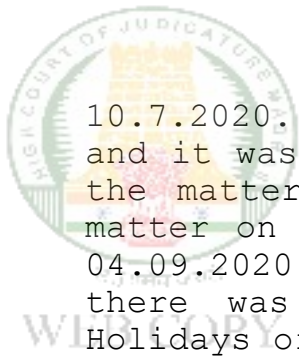
5.The learned counsels appearing for the Petitioners would contend that though several grounds have been raised to assail the detention orders in these Habeas Corpus petitions, the Petitioners are entitled to succeed on two grounds; firstly, on the ground of non application of mind on the part of the Detaining Authority and secondly on the ground of inordinate and unexplained delay in disposing the representations sent on behalf of the detenus'.

6.Per contra, learned Additional Public Prosecutor appearing for the respondents, on instructions, would argue that the detention orders came to be passed taking note of the huge quantity of Ganja involved in these cases. It is the submission of the learned Additional Public Prosecutor that the detenus were found in possession of 120 Kgs of Ganja at the time of their arrest. The second respondent, the Detaining Authority, after having satisfied with the materials furnished by the Sponsoring Authority, had rightly passed the detention orders and there is no illegality or infirmity in the detention orders. It is also stated that even if there is any delay in disposal of the representations, it has not caused any prejudice to the rights of the detenus and hence, prayed for dismissal of the habeas corpus petitions.

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

8.A perusal of the detention orders would show that the detenus have been clamped with the detention orders only for their involvement in Crime No.38 of 2020, on the file of Sindhupatti Police Station, Madurai District under Section 8(c) r/w 20(b)(ii) (c), 25 and 29(i) of NDPS Act. However, in para 4 of the detention orders, it has been stated that the Detaining Authority is satisfied that the detenus are habitually in possession and sale of intoxicating drugs and thereby committing the offence. When the detenus have been implicated only in one case and referring them as habitual offenders, shows the lack of application of mind on the part of the detaining authority.

9. In H.C.P(MD)No.385 of 2020, 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 27.06.2020 and it was received on



10.7.2020. Remarks were called for on the same day i.e. 10.7.2020 and it was received on 25.08.2020. The Deputy Secretary dealt with the matter on 26.08.2020. The concerned Minister dealt with the matter on 03.09.2020 and the representation came to be rejected on 04.09.2020. It is seen that in between 10.07.2020 and 25.08.2020, there was a delay of 45 days, after excluding the Government Holidays of 15 days, there was a delay of 30 days in considering the petitioner's representation.

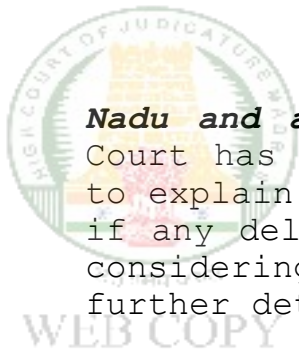
10.In H.C.P(MD)No.391 of 2020, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 27.06.2020 and it was received on 10.7.2020. Remarks were called for on the same day i.e. 10.7.2020 and it was received on 13.08.2020. The Deputy Secretary dealt with the matter on 13.08.2020. The concerned Minister dealt with the matter on 03.09.2020 and the representation came to be rejected on 04.09.2020. It is seen that in between 10.07.2020 and 13.08.2020, there was a delay of 34 days, after excluding the Government Holidays of 11 days, there was a delay of 23 days in considering the petitioner's representation.

11.In H.C.P(MD)No.464 of 2020, 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 2.7.2020 and it was received on 10.7.2020. Remarks were called for on the same day i.e. 10.7.2020 and it was received on 25.08.2020. The Deputy Secretary dealt with the matter on 26.08.2020. The concerned Minister dealt with the matter on 03.09.2020 and the representation came to be rejected on 04.09.2020. It is seen that in between 10.07.2020 and 25.08.2020, there was a delay of 45 days, after excluding the Government Holidays of 15 days, there was a delay of 30 days in considering the petitioner's representation.

12.In H.C.P(MD)No.513 of 2020, 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 17.7.2020 and it was received on 24.7.2020. Remarks were called for on the same day i.e. 24.7.2020 and it was received on 26.08.2020. The Deputy Secretary dealt with the matter on 26.08.2020. The concerned Minister dealt with the matter on 03.09.2020 and the representation came to be rejected on 04.09.2020. It is seen that in between 24.07.2020 and 26.08.2020, there was a delay of 31 days, after excluding the Government Holidays of 11 days, there was a delay of 20 days in considering the petitioner's representation.

13. At this juncture, it is useful to refer the decision of the Honourable Apex Court in the case of **Rajammal vs. State of Tamil**

<https://hcservices.ecourts.gov.in/hcservices/>



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 representations and if any delay was caused on account of nay indifference or lapse in considering the representations, such delay will adversely affect further detention of the prisoners.

14. In the case on hand, as stated supra, the delay of 30 days, 23 days, 30 days and 20 days respectively in considering the representations of the petitioners remains unexplained by the respondents. Hence, in our considered view, the detention orders are liable to be set aside solely on the ground of delay and non application of mind on the part of the detaining authority as referred supra.

15. In fine, the Habeas Corpus Petitions are allowed. The detention orders in (1) No.B.C.D.F.G.I.S.S.S.V.No.11 of 2020, dated 19.6.2020 (2) No.B.C.D.F.G.I.S.S.S.V.No.10 of 2020, dated 19.6.2020 (3) No.B.C.D.F.G.I.S.S.S.V.No.9 of 2020, dated 09.6.2020 and (4) No.B.C.D.F.G.I.S.S.S.V.No.14 of 2020, dated 7.7.2020, passed by the second respondent, are set aside. Consequently, the detenus, namely, (1) Murugan, son of Pinniyappan, aged about 34 years (2) Kasimayan, son of Mokkalayan, aged about 27 years (3) Anand, son of Mayan, aged about 30 years and (4) Bakkiyaraj, son of Chandran, aged about 35 years, who are now detained at Central Prison, Madurai are directed to be released forthwith unless their presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CO)

// 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 Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.
- 2.The Joint Secretary to Government,
Public (Law & Order),
Fort Saint George, Chennai-9.
- 3.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Madurai.
- 4.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
- 5.The Inspector of Police,
Sindhupatti Police Station,
Madurai District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COMMON ORDER MADE IN

H.C.P. (MD) Nos.385,391,464 and
513 of 2020

16.12.2020

PM(CO)

NR (31/12/2020) 7P : 7C