



WEB COPY

H.C.P.(MD)No.928 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

H.C.P. (MD)No.928 of 2019

Ramamoorthy : Petitioner /Father of the detenu

Vs.

1.State of Tamil Nadu
rep. by its Secretary to Government
Government of Tamil Nadu,
Home, Prohibition and Excise Department
Chennai-9.

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

3.The Superintendent
Central Prison,
Madurai.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for records pertaining to the proceedings of the 2nd respondent made in his proceedings Detention order in Cr.M.P.No.12/2019 dated 25.07.2019 and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son "Anand Kumar", S/o.Ramamorthy, aged about 32 years, now detained at the Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.C.Karthikeyan
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

(Order of the Court was made by T.RAJA, J.)

The petitioner is the father of detenu viz., Anand Kumar, aged about 32 years. The detenu has been detained, as per the order of the second respondent, dated 25.07.2019, under Section 3(i) of the Tamil Nadu Act 14 of 1982, branding him as "DRUG OFFENDER". Challenging the same, the petitioner is before this Court in this

<https://hccourts.org.in/servlets/HabeasCorpusPetition>.



2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.

3. The Sponsoring Authority had recommended for the detention of the Petitioner under Act 14 of 1982 on a solitary case registered against the Petitioner and the Petitioner was thereafter arrested in the said case. The Detaining Authority has branded the detenu as a 'Drug Offender' and has passed the Detention order, dated 25.07.2019.

4. Learned counsel for the petitioner, assailed the impugned order, *inter alia*, on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered properly and seriously and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon'ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

5. Learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was a delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

6. We have considered the above submissions.

7. In this case, the Detention Order was passed on 25.07.2019. As against the same, the petitioner made a representation on 22.08.2019 and the same has been received on 26.08.2019, immediately, the remarks were called for on 27.08.2019, then, the same were received on 30.08.2019 and again, the same has been dealt with on the same day. Finally, rejection order was passed on 23.09.2019. Since in between the date of submitting the representation till the date of rejection order, there was a huge inordinate and unexplained delay of 11 days on the part of the Government in considering the representation. The copy of the proforma produced by the learned Additional Public Prosecutor shows that there are 8 intermittent Government holidays i.e 31.08.2019, 01.09.2019, 02.09.2019, 07.09.2019, 08.09.2019, 10.09.2019, 14.09.2019 and 15.09.2019 between 30.08.2019 and 19.09.2019 and even after excluding the holidays, there is a delay of 11 days, which is unexplained on the part of the detaining authority and hence, on the sole ground, the order of detention is liable to be interfered with.



8. In similar occasion, the Hon'bl Apex Court in **Rekha Vs. State of Tamil Nadu**, [2011 (5) SCC 244], has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Apex Court has further held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu.

9. Again, in **Tara Chand Vs. State of Rajasthan and others**, [1980 (2) SCC 321], the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

10. Therefore, applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 11 working days and when the respondents have not given any valid reasons explaining the delay of 11 days, the impugned detention order stands vitiated, in the light of mandatory condition mentioned in Article 22(5) of the Constitution of India, wherein, it is held that the authority making the order shall, as soon may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. When such clause 22(5) says that earliest opportunity of making a representation against the order, the said analogy will equally apply to the respondents for disposing of the said representation with a speaking order. In the present case, there has been delay in considering the representation. Therefore, right to consider his representation has been denied. On this score, the impugned order is liable to be quashed. Resultantly, the impugned order is quashed. Consequently, this Habeas Corpus Petition is allowed. The detenu, namely Anand Kumar, S/o. Ramamorthy, aged about 32 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



1.The Secretary to Government
Government of Tamil Nadu,
Home, Prohibition and Excise Department
Chennai-9.

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

3.The Superintendent
Central Prison,
Madurai.

4. The Joint Secretary 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.C.KARTHIKEYAN, Advocate (SR-5302[F] dated 07/02/2020)

Order made in
H.C.P. (MD)No.928 of 2019
Dated: 05.02.2020

VB(21.02.2020) 4P 7C