



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1136 of 2019

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Selvarani

...Petitioner/Wife of the Detenu

-vs-

1.State of Tamil Nadu

Rep.by the Additional Chief Secretary to Government

Home, Prohibition and Excise Department

Fort. St.George, Chennai-600 009

2.The District Collector and District Magistrate

Tirunelveli District, Tirunelveli-9

3.The Superintendent of Prison

Palayamkottai Central Prison

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 calling for the entire records connected with the detention order passed in M.H.S.Confdl No.88/2019, dated 16.10.2019, on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu by name Vengatesh, son of Murugan alias Saraimurugan, aged about 25 years, now detained at Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Vinoth Bharathi

For Respondents : Mr.V.Neelakandan

Additional Public Prosecutor

O R D E R

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

Assailing the order of detention in M.H.S.Confdl No.88/2019, dated 16.10.2019, passed by the second respondent, branding the detenu viz., Vengatesh, son of Murugan alias Saraimurugan, aged about 25 years, as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982, his wife has filed the present habeas corpus petition.

2. Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 16.10.2019, Mr.N.Pragalathan, learned counsel for the petitioner, would mainly contend that the impugned order of detention is liable to be set aside on the ground of delay in disposal of the representation. It is the submission of the learned counsel for the



petitioner that there is unexplained and inordinate delay in considering the petitioner's representation, which would vitiate the order of detention.

3. Further, the learned counsel for the petitioner would submit that the habeas corpus petition filed by the co-accused in H.C.P.(MD) No.1137 of 2019, has been allowed by this Court on the ground of delay.

4. The learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, would contend that the detention order has been passed by the second respondent with cogent materials only to prevent the detenu from indulging in similar activities in future. The delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the order of detention passed by the second respondent.

5. We have heard the rival submissions and perused the materials placed on record.

6. In the case on hand, the detention order came to be passed on 16.10.2019. Aggrieved over the same, the petitioner made a representation to the first respondent on 16.11.2019 and the same was received on 22.11.2019. Remarks were called for on the same day i.e.22.11.2019 and it was received on 04.12.2019. The Deputy Secretary dealt with the matter on 05.12.2019. Thereafter, the concerned Minister dealt with the matter on 14.12.2019 and the petitioner's representation was rejected on 16.12.2019. In between 05.12.2019 and 14.12.2019, there is a delay of six days, excluding the Government Holidays of two days, in considering the petitioner's representation.

7. 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 it is held as follows:

"7. It is a Constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the consideration for the decision to be taken on the representation, the words 'as soon as may be' in Clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is preempted from explaining the delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible or unavoidable caused. This position has been



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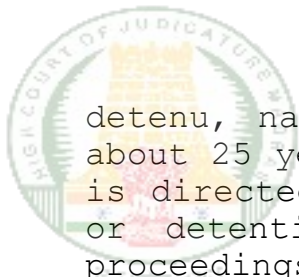
well delineated by a Constitution Bench of this Court in *M.M.Abdulla Kunhi v. Union of India*, 1991 (1) SCC (Cri) 613. The following observations of the Bench can profitably be extracted here: (SCC 484, Para 12)

"It is a Constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in Clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and dispose of with a sense of urgency without any avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the Detention Law concerned within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the Constitutional imperative and it would render the continued detention impermissible and illegal."

8. The position, therefore, now is that if delay was caused on account of nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

8. In the case on hand, as stated supra, the delay of six days in considering the representation of the detenu 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.

9. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in M.H.S.Confdl No.88/2019, dated 16.10.2019, is set aside. Consequently, the



detenu, namely, Vengatesh, son of Murugan alias Saraimurugan, aged about 25 years, who is now detained at Palayamkottai Central Prison, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case / proceedings.

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Sd/-

Assistant Registrar (CSII)

// 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.

krk / skn

To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu, Fort. St.George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
- 4.The Joint Secretary to Government Public (L&O)
Fort St.George,
Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1136 of 2019
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