



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1141 of 2019

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Alex @ Alexander
(Male/Age 33),
S/o.Essak

... Petitioner/Detenu

-vs-

1.State of Tamil Nadu

Rep.by the Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai-600 009

2.The District Collector and District Magistrate

Kanniyakumari District
Nagercoil

3.The Superintendent of Prison

Central Prison
Palayamkottai
Tirunelveli

... 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 P.D.No.40 of 2019, dated 15.10.2019, on the file of the second respondent herein and quash the same and direct the respondents to produce the deventu or body of the detenu namely Alex @ Alexandar, aged about 33 years, son of Essak, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.V.Neelakandan
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 detenu, namely, Alex @ Alexandar, son of Essak, aged about 33 years, against the detention order in P.D.No.40 of 2019, dated



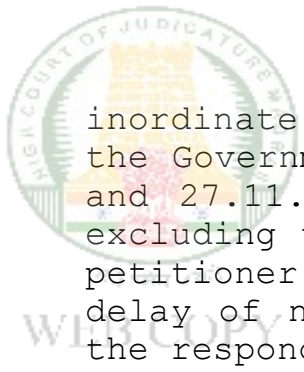
15.10.2019, passed by the second respondent, branding him as "Drug-Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

2. Mr.N.Pragalathan, learned counsel for the petitioner, would argue that the detention order impugned in this habeas corpus petition is liable to be set aside on the grounds that the representation of the detenu was not considered in time and the similar case relied upon by the Detaining Authority is not similar to the case of the detenu.

3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, would argue that there is no delay in disposal of the representation of the detenu and even if there is any delay, it is not shown as to how prejudice caused to him. It is further submitted that even though the bail petition of the detenu was pending consideration by the Special Court, the Detaining Authority has rightly relied on the bail order granted in a similar case. According to the learned Additional Public Prosecutor, there is no illegality or infirmity warranting interference of this Court.

4. We are unable to agree with the submissions of the learned Additional Public Prosecutor. In the instant case, the detenu is having one adverse case and he was detained on the basis of the ground case. The Detaining Authority, to arrive at the subjective satisfaction, has referred to the bail order, dated 19.07.2018 in CrI.M.P.No.2516 of 2018, on the file of the Principal Special Court for Essential Commodities and Narcotic Drugs and Psychotropic Substances Act Cases, Madurai, granted to one Naseer. A perusal of the bail order annexed at Page No.245 of the booklet would show that in that case, the learned Special Public Prosecutor has stated that the accused was not having any previous case and he has no objection for grant of bail to the accused therein. Indisputably, in the present case, there is one adverse case pending against the detenu and it shows non-application of mind on the part of the Detaining Authority in comparing the bail order granted to one Naseer, by order dated 19.07.2018 in CrI.M.P.No.2516 of 2018.

5. Further, the detenu was detained by the order of the second respondent, dated 15.10.2019. Aggrieved over the same, he has sent a representation on 22.10.2019 and it was received on 29.10.2019. Remarks were called for on the same day i.e. on 29.10.2019 and it was received on 14.11.2019. The Under Secretary and the Deputy Secretary dealt with the matter on 15.11.2019 and the concerned Minister dealt with the matter on 27.11.2019. Thereafter, the representation came to be rejected on 29.11.2019. It is so seen that between 29.10.2019 and 14.11.2019, there is



inordinate and unexplained delay of twelve days, after excluding the Government Holidays of three days, and also between 15.11.2019 and 27.11.2019, there is unexplained delay of seven days, after excluding the Government Holidays of four days, in considering the petitioner's representation. Thus, totally, there is enormous delay of nineteen days, which has not been properly explained by the respondents.

6. The Honourable Apex Court in the case of **Rajammal vs. State of Tamil Nadu and another**, reported in **1999 (1) SCC 417**, has 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 reasons or unavoidable caused. This position has been 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



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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."

7. In the case on hand, as stated supra, the delay of nineteen days has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the grounds of non-application of mind and delay, by following the decisions of the Honourable Apex Court referred supra.

8. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in P.D.No.40 of 2019, dated 15.10.2019, is set aside. Consequently, the detenu, namely, Alex @ Alexandar, son of Essak, aged about 33 years, who is now detained at Central Prison, Palayamkottai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar (AS)

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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 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,
Kanniyakumari District,
Nagercoil.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Joint Secretary to Government,
Public(Law and Order)
Fort.St.George,
Chennai-600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1141 of 2019
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