



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2020

CORAM:

WEB COPY

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

H.C.P. (MD) No.1198 of 2019

Pommuthai ... Petitioner/Mother of the detenu

-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 Magistrate and District Collector,
Pudukottai District, Pudukottai.

3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order of the second respondent in P.D.O.No.72/2019, dated 24.10.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Gowtham @ Gowthamaraja, S/.Duraikannu, aged about 27 years, now confining at Trichy Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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 challenging the detention order passed by the second respondent, dated 24.10.2019 in P.D.O.No.72/2019. The petitioner is the mother of the detenu.



2.Mr.R.Alagumani, learned counsel appearing for the petitioner would submit that the order impugned in this Habeas Corpus Petition is liable to be set aside on the ground of non furnishing of the relied on documents and also on the ground of delay in considering the representation of the petitioner. He would further submit that against all the accused, detention orders have been clamped and except the order of detention passed against the petitioner, the other detention orders have been revoked by the Government.

3.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, on instruction would submit that the detaining authority having satisfied with the materials placed by the sponsoring authority, has rightly passed the detention order and there is no illegality or irregularity in the detention order warranting interference of this Court. It is further stated that the delay in disposal of the representation caused no prejudice to the detenu and prayed for dismissal of this Habeas Corpus Petition.

4.In the instant case, in paragraph No.5 of the detention order, it is stated that the detenu filed a petition in Crl.M.P.No.2954 of 2019 and it was dismissed on 19.10.2019. However, the relied on document has not been furnished to the detenu admittedly. This would deprive the detenue from making effective representation to the authorities for revocation of the detention order.

5.The proforma circulated by the learned Additional Public Prosecutor would show that the detenu was detained on 24.10.2019 and he made a representation for revocation of the order on 07.11.2019 and the same was received by the respondents on 14.11.2019 and remarks were received from the sponsoring authority on 06.12.2019. In between 04.11.2019 and 06.12.2019, there was a delay of 22 days and after excluding the six days of Government Holidays, the delay of 16 days was not explained by the respondents. It is settled law that the unexplained delay would vitiate the order of detention.

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 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

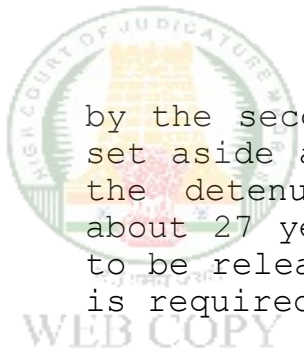


delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable caused. This position has been well delineated by a Constitution Bench of this Court in *M.M.Abdulla Kunhi v. Union of India*, 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 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 light of the above facts, we are of the opinion that the detention order impugned in this Habeas Corpus Petition is liable to be set aside. Accordingly, the order of detention passed



by the second respondent, in P.D.O.No.72/2019, dated 24.10.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Gowtham @ Gowthamaraja, S/.Duraikannu, aged about 27 years, now confining at Trichy Central Prison, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (Crl.Side)

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/ /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.

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 District Magistrate and District Collector,
Pudukottai District, Pudukottai.
- 3.The Superintendent of Prison,
Trichy Central Prison, Trichy District.
- 4.The Joint Secretary to Government of Tamil Nadu,
Public (Law and Order), Chennai -09.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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