



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2020

CORAM:

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

H.C.P. (MD) No.1236 of 2019

Selvi ... Petitioner/Mother of the detenu

-vs-

- 1.State of Tamil Nadu, rep. by
The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kanyakumari District, Nagercoil.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli. ... 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 passed in P.D.No.44/2019, dated 11.11.2019 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son i.e., Ramesh @ Manu, aged about 24 years, S/o.Manikandan, now detained at 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.]

The present Habeas Corpus Petition has been filed by the mother of the detenu viz., Ramesh @ Manu, S/o.Manikandan, who has been detained by the order of the second respondent, dated

<https://hccs.ecourt.gov.in/jsp/index.htm>



11.11.2019 in P.D.No.44/2019, where under he has been branded as 'Goonda'.

2.The learned counsel for the petitioner Mr.N.Pragalathan would argue that the impugned order is liable to be quashed on the ground of non application of mind on the part of the detaining authority. It is further argued that the detenu was having three adverse cases and he was arrested in the ground case on 05.10.2019. He was released on bail in the first adverse case and on Prisoner's Transit Warrant (PT Warrant), he was remanded in two other adverse cases. The detaining authority failed to take into consideration the two adverse cases registered against him while reaching subjective satisfaction. It is next contended that the procedural safeguards guaranteed under Article 21 and 22 of the Constitution has been violated, since the representation of the petitioner was not considered on time.

3.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, on instruction would submit that the detention order has been passed by the second respondent on the basis of cogent materials produced by the sponsoring authority. According to the learned Additional Public Prosecutor, 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, a perusal of the records would reveal that totally three adverse cases have been registered against the detenu and he was released on bail in the first adverse case and he was remanded in two adverse cases and the ground case. In paragraph No.4 of the grounds of detention, it is stated that the bail petition filed in the ground case in Cr.M.P.No.5203 of 2019 was dismissed by the Principal Sessions Judge, Kanyakumari at Nagercoil on 08.11.2019. As rightly pointed out by the learned counsel for the petitioner, the detaining authority failed to take into consideration the remand of the detenu in two adverse cases, which shows lack of application of mind on the part of the detaining authority.

5.The proforma circulated by the learned Additional Public Prosecutor would show that the detenu was detained on 11.11.2019 and he made a representation for revocation of the order on 16.11.2019 and the same was received by the respondents on 11.12.2019. The detaining authority received the representation from the Government on 13.12.2019 and called for remarks from the sponsoring authority on 14.12.2019, but he could receive the remarks only on 26.12.2019. In between 14.12.2019 and 26.12.2019, there was a delay of 11 days and after excluding the four days of



Government Holidays, the delay of 7 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.No.44 of 2019, dated 11.11.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Ramesh @ Manu, S/o.Manikandan, male, aged 24 years, who is detained in Central Prison, Palayamkottai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar(Records)

// 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.

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kanyakumari District, Nagercoil.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
4. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1236 of 2019
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