



WEB COPY

H.C.P.(MD) No.1253 of 2019

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.1253 of 2019

Pappathi

... Petitioner

-vs-

1.The State of Tamil Nadu
rep.by Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-9

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

3.The Superintendent
Central Prison, Madurai

4.The Inspector of Police
Kannivadi Police Station
Dindigul 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 records relating to the detention order passed by the second respondent in Detention Order No.66/2019, dated 29.10.2019 and to quash the same and direct the respondents to produce the body or person of the detenu viz., Mayakrishnan, aged 36 years, son of Ochappan, before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : Mr.D.Ramesh Kumar

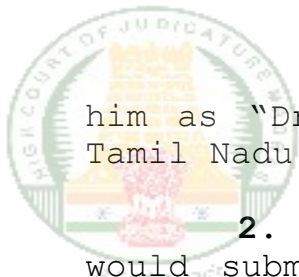
For Respondents : Mr.V.Neelakandan

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 wife of the detenu, namely, Mayakrishnan, son of Ochappan, aged 36 years, against the detention order No.66/2019, dated 29.10.2019, branding



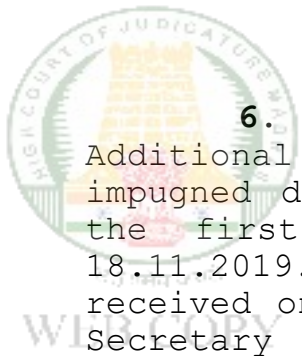
him as "Drug Offender" as contemplated under Section 2(e) of the Tamil Nadu Act 14 of 1982.

2. Mr.D.Ramesh Kumar, learned counsel for the petitioner, would submit that the detenu was arrested on 14.10.2019 and the detention order came to be passed on 29.10.2019. It is stated that based on a solitary case, the detention order was passed and the bail petition filed by the detenu in the ground case was dismissed by the learned Additional District Judge for Principal Special Court for Narcotic Drugs Psychotropic Substances Act Cases, Madurai, vide order dated 22.10.2019 in Cr.M.P.No.4149 of 2019 and the bail petition was pending consideration before the High Court in Crl.O.P. (MD) No.15550 of 2019. But, the Detaining Authority, referring to the bail order dated 10.06.2015 in Crl.O.P.(MD) No.10286 of 2015 granted to one Ponnangan by the High Court, has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail by filing bail petition before the Court of law in the ground case. It is the submission of the learned counsel for the petitioner that though the bail order in the similar case has been enclosed, the copy of the bail petition has not been enclosed in the booklet, which deprived the valuable rights of the detenu from making effective representation to the Authorities concerned for revocation of the detention order. It is also stated that the representation of the petitioner was not disposed of in time and there is unexplained delay. Therefore, on these two grounds, the impugned detention order is liable to be set aside.

3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, would argue that though the detention order has been passed based on the solitary case, considering the quantity involved in this case and also after satisfying with the materials placed by the Sponsoring Authority, the detention order has been passed by the Detaining Authority and there is no illegality or irregularity warranting interference of this Court. It is further submitted that the delay has caused no prejudice to the detenu and hence, prayed for dismissal of the habeas corpus petition.

4. Heard the learned counsel on either side and perused the materials available on record.

5. In the instant case, a perusal of the booklet would reveal that the Detaining Authority has enclosed only the bail order, dated 10.06.2015 in Crl.O.P.(MD) No.10286 of 2015 granted by this Court in a similar case at Page No.54 of the booklet. However, the bail petition has not been enclosed. The Honourable Apex Court in the case of **M.Ahamed Kutty vs. Union of India and another**, reported in **1990-2-SCC-1** has categorically held that bail petitions and the bail orders in similar cases relied on by the Detaining Authority in the detention order are the vital documents and non-furnishing of those documents would certainly deprive the detenu from making effective representation to the Authority concerned.



6. Furthermore, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 13.11.2019 and it was received on 18.11.2019. Remarks were called for on 19.11.2019 and it was received on 28.11.2019. The Under Secretary as well as the Deputy Secretary dealt with the matter on 29.11.2019 and the concerned Minister dealt with the matter on 14.12.2019 and the representation came to be rejected on 16.12.2019. It is seen that in between 29.11.2019 and 14.12.2019, there is unexplained and inordinate delay of ten days, after excluding the Government Holidays of four days, in considering the 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 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



WEB COPY

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 ten 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 as stated supra, by following the above referred decisions of the Honourable Apex Court.

9. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in Detention Order No.66/2019, dated 29.10.2019, is set aside. Consequently, the detenu, namely, Mayakrishnan, son of Ochappan, aged 36 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (AD-II)

// 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.

To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St.George, Chennai-9.
- 2.The Joint Secretary to Government,
Home (Public & Law),
Fort st. George, Chennai - 09.
- 3.The District Magistrate and District Collector,
Dindigul District, Dindigul.
- 4.The Superintendent,
Central Prison, Madurai.
- 5.The Inspector of Police,
Kannivadi Police Station,
Dindigul District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1253 of 2019
30.07.2020

krk

SDS (12.08.2020) 5P-7C