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H.C.P.(MD) No.1267 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.1267 of 2019

Saranya

... Petitioner / Wife of the detenu

-vs-

1.State of Tamil Nadu rep.by its
Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Fort St.George, Chennai-600 009

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

3.The Superintendent
Central Prison, Tiruchirappalli. ... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus directing the respondents to produce the body of the detenu namely Nallamuthu, son of Vaithi, aged about 35 years, before this Court, who is now detained in the Central Prison, Tiruchirappalli, in pursuant to the detention order passed by the second respondent in C.M.P.No.68, dated 06.11.2019 to call for the records and quash the same and release the detenu at liberty forthwith.

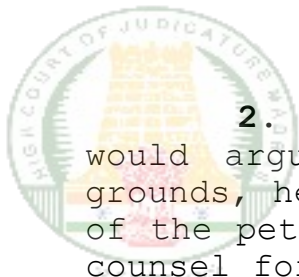
For Petitioner : Mr.S.Muthukrishnan

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, Nallamuthu, son of Vaithi, aged about 35 years, challenging the detention order in C.M.P.No.68, dated 06.11.2019, branding him as "Sand Offender" as contemplated under Section 2(gg) of Tamil Nadu Act 14 of 1982.



2. Mr.S.Muthukrishnan, learned counsel for the petitioner, would argue that even though the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representation. It is submitted by the learned counsel for the petitioner that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India have not been followed in this case and there is unexplained and inordinate delay in disposal of the petitioner's representation, which would vitiate the impugned order of detention.

3. Mr.V.Neelakandan, learned Additional Public Prosecutor, by relying on the counter affidavit filed by the second respondent, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. It is also stated that even if there is any delay in disposal of the representation, it has not caused any prejudice to the rights of the detenu and hence, prayed for dismissal of the habeas corpus petition.

4. Heard both sides and perused the materials available on record.

5. In the instant case, 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 11.11.2019 and it was received on 29.11.2019. Remarks were called for on 02.12.2019 and it was received on 03.01.2020. The Deputy Secretary dealt with the matter on the same day i.e. 03.01.2020. The concerned Minister dealt with the matter on 07.01.2020 and the representation came to be rejected on the same day i.e. 07.01.2020. It is seen that in between 02.12.2019 and 03.01.2020, there was a delay of 20 days, after excluding the Government Holidays of 10 days, in considering the petitioner's representation.

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

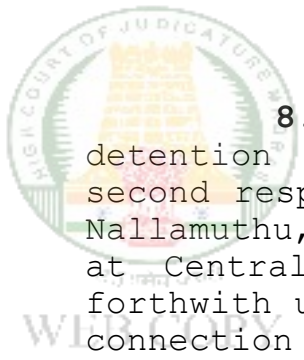


representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable caused. This position has been well delineated by a Constitution Bench of this Court in *M.M.Abdulla Kunhi v. Union of India*, 1991 (1) SCC (Cri) 613. The following observations 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 case on hand, as stated supra, the delay of 20 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.



8. In fine, the Habeas Corpus Petition is allowed. The detention order in C.M.P.No.68, dated 06.11.2019, passed by the second respondent, is set aside. Consequently, the detenu, namely, Nallamuthu, son of Vaithi, aged about 35 years, who is now detained at Central Prison, Tiruchirappalli, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (AS)

// 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 & Excise Department,
State of Tamil Nadu,
Fort St.George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Tiruchirappalli District, Tiruchirappalli.
- 3.The Superintendent,
Central Prison, Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort saint George, Chennai -09.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.1267 of 2019
30.07.2020

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