



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2020

CORAM:

WEB COPY

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

H.C.P. (MD) No.1265 of 2019

Bhuvaneswari ... Petitioner/Wife of the detenue

-vs-

1.The Principal Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 9.

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

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records in pursuant to the proceedings of the second respondent in Detention Order in Cr.M.P.No.74/2019 dated 12.11.2019 quash the same and consequently, direct the respondents to produce the detenue, namely, Prabu, S/o Kanthan, aged 35 years who is now detained in Central Prison, Trichy before this Court and set him at liberty.

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.]

Challenging the detention order of the second respondent dated 12.11.2019 passed in Cr.M.P.No.74/2019 branding the detenu, namely, Prabu S/o Kanthan aged 35 years, as 'Sand Offender' as contemplated under Section 2(gg) of Tamil Nadu Act 14 of 1982, his

<https://hcservices.ehmts.gov.in/hcservices/> the Habeas Corpus Petition.



2.Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 12.11.2019, Mr.N.Pragalathan, learned counsel for the petitioner would argue that the procedural safeguards guaranteed under Article 21 and 22 of the Constitution of India have not been followed. It is submitted by the learned counsel for the petitioner that there is unexplained and inordinate delay in considering the representation of the petitioner, which would vitiate the order of detention.

3.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the order of detention passed by the second respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

4.We have heard the rival submissions and perused the materials available on records.

5.In the matter on hand, the detention order came to be passed on 12.11.2019. Aggrieved over the same, the petitioner made a representation 23.11.2019 and the same was received on 26.11.2019. Remarks were called for on the same day i.e., 26.11.2019 and in view of the delay, reminders dated 27.12.2019 and 06.02.2020 have been sent, but remarks were received only on 13.02.2020. The Deputy Secretary dealt with the matter on 14.02.2020. The concerned Minister dealt with the matter on 17.02.2020 and thereafter, the petitioner's representation came to be rejected on 18.02.2020.

6.Admittedly, in this case, the first respondent Government received the remarks for the representation dated 23.11.2019 only on 13.02.2020. In the meantime, three reminders have been sent as stated above.

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 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, there is absolutely no explanation for the delay between 26.11.2019 and 13.02.2020. Even after excluding 27 Government holidays, there is unexplained delay of 51 days in considering the representation of the detenu. 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.

9. In fine, the order of detention passed by the second respondent, in Cr.M.P.No.74/2019 dated 12.11.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Prabu S/o Kanthan aged 35 years, as 'Sand Offender', who is now detained in Central Prison, Trichy 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)

skn

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 Principal Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai - 9.

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



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

4. The Joint Secretary to Govt. of Tamil Nadu,
Public (Law & Order), Fort Saint George,
Chennai-9.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1265 of 2019
21.07.2020

ns (CO)
TR(31.07.2020) 5P 6C