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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1337 of 2019

T.Muneeswari

... Petitioner

-vs-

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Madurai City, Madurai.

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

... 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 No.80/BCDFGISSSN/2019 dated 07.11.2019 quash the same and consequently direct the respondents to produce the detenu, namely, Baburaj @ Dinkal, S/o Dhanasekar, aged 22 years who is now detained in Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.M.Chandrabose

For Respondents : Mr.V.Neelakandan

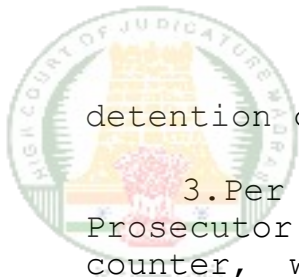
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The Habeas Corpus Petition has been filed by the wife of the detenu, namely, Baburaj @ Dinkal, S/o Dhanasekar, aged 22 years, who has been branded as "Goonda" by the second respondent in Detention Order No.80/BCDFGISSSN/2019 dated 07.11.2019 as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2.Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 07.11.2019, Mr.M.Chandrabose, learned counsel for the petitioner would contend that the procedural safeguards guaranteed under Article 21 and 22 of the Constitution of India has been violated and there is an inordinate and unexplained delay in considering the representation of the petitioner and on this sole ground, the



detention order is liable to be set aside.

3.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents while reiterating the counter, 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, which would prejudice to the maintenance of the public order. 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 instant case, it is not in dispute that the detenu was detained by the order of the second respondent dated 07.11.2019. Aggrieved over the same, a representation dated 07.12.2019 has been sent to the first respondent and the same was received on 17.12.2019 and on the same day, remarks were called for and the remarks were received on 19.12.2019. The Deputy Secretary dealt with the matter on 20.12.2019. The concerned Minister dealt with the matter on 07.01.2020 and thereafter, the detenu's representation was rejected on 07.01.2020. It is seen that there was delay of 17 days between 20.12.2019 and 07.01.2020. It is also seen that there are 8 Government holidays and after excluding the same, there is a delay of 9 days in considering the representation of the detenu.

6. 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



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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, there is absolutely no explanation for the delay of 9 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.

8. In fine, the order of detention passed by the second respondent, in No.80/BCDFGISSN/2019 dated 07.11.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Baburaj @ Dinkal, S/o Dhanasekar, aged 22 years now detained at Central Prison, Madurai is directed to be released

