



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1335 of 2019

Kalyani

...Petitioner/sister of Detenue

-vs-

1.The State of Tamil Nadu

rep.by Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-9

2.The District Collector and District Magistrate

Pudukkottai District
Pudukkottai

3.The Superintendent of Prison

Central Prison
Trichy

4.The Inspector of Police

Alangudi Prohibition Enforcement Wing
Pudukkottai
Pudukkottai District
(Crime No.1371 of 2019)

...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 in P.D.O.No.85/2019, dated 28.11.2019 and to quash the same and direct the respondents to produce the body or person of the detenu, Alagar @ Alagarsamy, son of Velu, aged about 48 years, before this Court and set him at liberty, now detained at Central Prison, Tiruchirappalli.

For Petitioner : Mr.Ma.Karunanithi

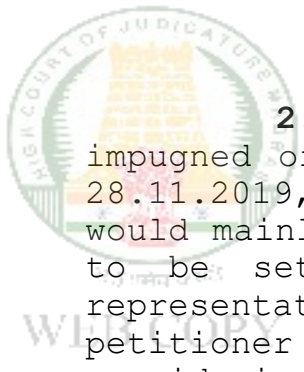
For Respondents : Mr.V.Neelakandan

Additional Public Prosecutor

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

Assailing the order of detention in P.D.O.No.85/2019, dated 28.11.2019, passed by the second respondent, branding the detenu viz., Alagar @ Alagarsamy, son of Velu, aged about 48 years, as "Boot-Legger" as contemplated under Section 2(b) of the Tamil Nadu Act 14 of 1982, his sister has filed the present habeas corpus petition.



2. Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 28.11.2019, Mr.Ma.Karunanithi, learned counsel for the petitioner, would mainly contend that the impugned order of detention is liable to be set aside on the ground of delay in considering the representation. It is the submission of the learned counsel for the petitioner that there is unexplained and inordinate delay in considering the petitioner's representation, which would vitiate the order of detention.

3. Mr.V.Neelakandan, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, would contend that the detention order has been passed by the second respondent with cogent materials only to prevent the detenu from indulging in similar activities in future. 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.

4. We have heard the rival submissions and perused the materials placed on record.

5. In this case, the Detention Order was passed on 28.11.2019. As against the same, the petitioner made a representation on 02.12.2019 and the same was received by the Collectorate from the Central Prison on 09.12.2019. The Parawar remarks were called for from the Sponsoring Authority on 10.12.2019. The remarks were received on 05.01.2020 and the report was sent to the Government on the same day i.e.05.01.2020. In between 10.12.2019 and 05.01.2020, there is a delay of sixteen five days, excluding the Government Holidays of nine days, in receiving remarks from the Sponsoring Authority.

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 or unavoidable caused. This position has been



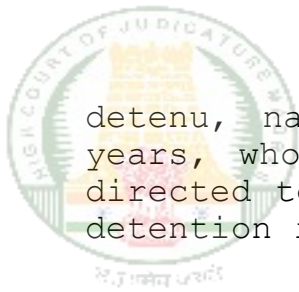
well delineated by a Constitution Bench of this Court in *M.M.Abdulla Kunhi v. Union of India*, 1991 (1) SCC (Cri) 613. The following observations of the Bench can profitably be extracted here: (SCC 484, Para 12)

"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 sixteen 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 order of detention passed by the second respondent, in P.D.O.No.85/2019, dated 28.11.2019, is set aside. Consequently, the



detenu, namely, Alagar @ Alagarsamy, son of Velu, aged about 48 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.

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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.

krk / skn

To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.
- 2.The District Collector and District Magistrate,
Pudukkottai District,
Pudukkottai.
- 3.The Superintendent of Prison,
Central Prison,
Trichy.
- 4.The Inspector of Police,
Alangudi Prohibition Enforcement Wing,
Pudukkottai,
Pudukkottai District.
- 5.The Joint Secretary to government of Tamil Nadu(L&O)
Fort Saint George, Chennai-9
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1335 of 2019
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KB(30.07.2020) 4P 7C

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