



WEB COPY

H.C.P.(MD) No.1350 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.09.2020
CORAM:

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

H.C.P. (MD) No.1350 of 2019

M.Pavithra

... Petitioner

-vs-

1.State of Tamil Nadu represented by its
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department, Secretariat,
Chennai - 9.

2.The District Collector/District Magistrate,
O/o District Collector
Dindigul District, Dindigul.

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 entire records connection with the Detention Order No.72/2019 dated 29.11.2019 passed by the second respondent on petitioner's husband namely, Muthuraja (28/19) Son of Kathavarayan, Nellur Village, Athoor Taluk, Dindigul District, has been detained and branded as "Drug Offender" under Section 3(1) of the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Cyber Law, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act-1982 (Tamil Nadu Act 14 of 1982) read with order issued by the Government in G.O.(D)No.251 Home, Prohibition and Excise (XVI) Department, dated 15.10.2019 and confined at Central Prison, Madurai to set aside the same and to produce him before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Maran

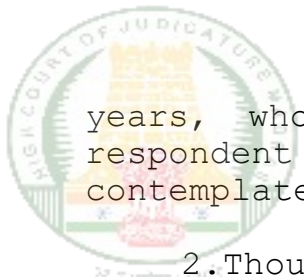
For Respondents : Mr.V.Neelakandan

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, Muthuraja Son of Kathavarayan, Male aged about 28
<https://hcservices.ecourts.gov.in/hcservices/>



years, who has been branded as "Drug Offender" by the second respondent in Detention Order No.72/2019, dated 29.11.2019, as contemplated under Section 2(e) 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 29.11.2019, Mr.M.Maran, learned counsel for the petitioner would contend that the procedural safeguards guaranteed under Articles 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.

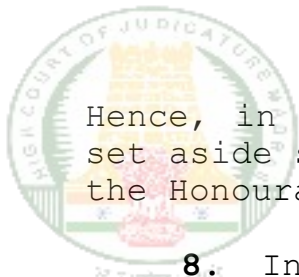
3.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent 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 29.11.2019. Aggrieved over the same, a representation dated 09.12.2019 has been sent to the first respondent and the same was received on 12.12.2019 and on the same day, remarks were called for and the same were received on 26.12.2019. The Deputy Secretary dealt with the matter on 27.12.2020. The concerned Minister dealt with the matter on 07.01.2020 and thereafter, the detenu's representation was rejected on 08.01.2020. It is seen that there was delay of 14 days between 12.12.2019 and 26.12.2019. It is also seen that there are 5 Government holidays and after excluding the same, there is a delay of 9 days in considering the representation of the detenu.

6.In the case of **Rajammal vs. State of Tamil Nadu and another (1999 (1) SCC 417)** the Honourable Apex Court observed and held that it is for the authority concerned to explain the delay, if any, in disposal of the representation and if any delay was caused on account of nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

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 Detention order No.72/2019 dated 29.11.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detainee, namely, Muthuraja S/o Kathavarayan, Male aged about 28 years, 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 (CO)

// 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,
Secretariat, Chennai - 9.
- 2.The District Collector/District Magistrate,
O/o District Collector
Dindigul District, Dindigul.
- 3.The Superintendent of Prison,
Central Prison, Madurai.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Secretariat, Chennai - 09.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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SDS (11.09.2020) 3P-6C

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