



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1365 of 2019

and

Cr1.M.P(MD)No.3117 of 2020

Deepa

... Petitioner/Wife of Detenu

-vs-

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

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Madurai.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order of the respondent No.2 in No.B.C.D.F.G.I.S.S.S.V.No.38/2019 dated 10.12.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Thangapandi son of Murugan, aged about 37 years, now detained as "Drug Offender" at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.V.Neelakandan

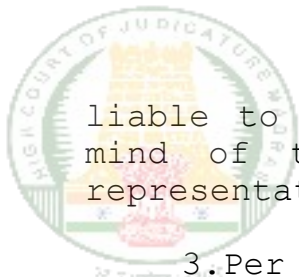
Additional Public Prosecutor

O R D E R

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

The present Habeas Corpus Petition has been filed by the wife of the detenu, namely, Thangapandi son of Murugan, aged about 37 years, challenging the detention order passed by the second respondent, dated 10.12.2019 in No.B.C.D.F.G.I.S.S.S.V.No.38/2019, wherein the detenu has been branded as "Drug Offender" as contemplated under Section 2(e) of the Tamil Nadu Act 14 of 1982.

2.Mr.R.Alagumani, learned counsel for the petitioner would argue that two previous cases have been registered against the detenu for the possession of 1.500 gms and 1.200 gms of Ganja respectively and for possession of 2 kgs Ganja, the ground case has been registered. He would further submit that in all the three cases, he was arrested on 19.10.2019 and remanded to judicial custody. According to the learned counsel, the impugned order is



liable to be set aside on two grounds, namely, non-application of mind of the detaining authority and delay in considering the representation of the detenu.

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 matter on hand, admittedly, the detenu was having two adverse cases to his credit and the ground case. In paragraph 5 of the detention order, the detaining authority referred only the ground case, but the adverse cases were not taken into consideration while arrived at the subjective satisfaction, which shows non-application of mind on the part of the Detaining Authority and on that ground, the detention order impugned in this petition is liable to be set aside.

6.Further, the proforma circulated by the learned Additional Public Prosecutor would indicate that the representation dated 20.12.2019 was given to the first respondent and the same was received on 30.12.2019 and on the same day, remarks were called for. Remarks were received on 28.01.2020. The Deputy Secretary and the concerned Minister dealt with the matter on 28.01.2020. Eventually, the representation of the detenu was rejected on 29.01.2020. It is seen that there was delay of 29 days between 30.12.2019 and 28.01.2020. It is also seen that there are 12 Government holidays and after excluding the same, there is a delay of 17 days in considering the representation of the detenu, which is not explained by the respondents.

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

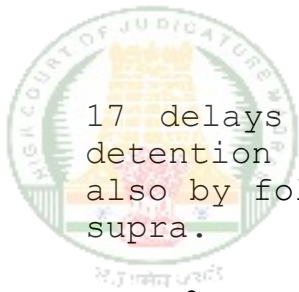


decision to be taken on the representation, the words 'as soon as may be' in Clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is preempted from explaining the delay which would have occasioned 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



17 delays as stated supra. Hence, in our considered view, the detention order is liable to be set aside on the ground of delay also by following the decision of the Honourable Apex Court referred supra.

9. In fine, the order of detention passed by the second respondent, in No.B.C.D.F.G.I.S.S.V.No.38/2019 dated 10.12.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Thangapandi son of Murugan, aged about 37 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. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

skn

Note :

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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Joint Secretary to Government,
Public (Law and Order), Fort.Saint George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.1365 of 2019
24.07.2020

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