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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1367 of 2019

Vairamuthu

... Petitioner

-vs-

1.The Principal 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,
Theni District.

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

... 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 entire records connected with the detention order of the respondent No.2 in Detention Order No.16/2019 dated 09.12.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Vairamuthu, son of Otchu, aged about 29 years, now confining 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

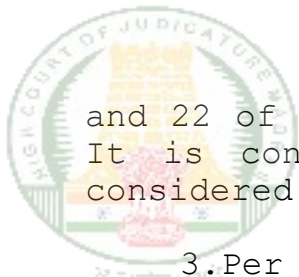
O R D E R

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

Challenge in this habeas corpus petition is the order of the detention passed by the second respondent dated 09.12.2019 in Detention No.16/2019 whereunder, the petitioner Vairamuthu, son of Otchu, aged about 29 years has been detained 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 submit that the procedural safeguards guaranteed under Article 21

<https://hcservices.ecourts.gov.in/hcservices/>



and 22 of the Constitution of India has been violated in this case. It is contended that the representation of the detenu was not considered on time and there is an unexplained and inordinate delay.

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. The pro forma circulated by the Additional Public Prosecutor would show that aggrieved over the order of detention dated 19.12.2019, a representation dated 20.12.2019 was sent to the first respondent and it was received on 24.12.2019. Remarks were called for on 24.12.2019 and the remarks were received on 14.01.2020. The Deputy Secretary dealt with the matter on 20.01.2020. The concerned Minister dealt with the matter on 22.01.2020 and thereafter, the petitioner's representation was rejected on 23.01.2020.

6.It is seen that there was delay of 21 days between 24.12.2019 and 14.01.2020. It is also seen that there are 8 Government holidays and after excluding the same, there is a delay of 13 days in considering the representation of the petitioner. It is the contention of the petitioner that the delay of 13 days in considering the representation of the petitioner was not properly explained. It is well settled that if the delay is not explained, the right guaranteed under the Constitution of India has been violated.

7.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.

8. For the foregoing reason, the Habeas Corpus Petition is allowed. The detention order of the respondent No.2 in Detention Order No.16/2019 dated 09.12.2019 is set aside. Consequently, the detenu, namely, Vairamuthu, son of Otchu, aged about 29 years, now



confining at Madurai Central Prison is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar

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/ /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 - 600 009.
- 2.The District Collector and District Magistrate
Office of the District Collector and District Magistrate,
Theni District.
- 3.The Superintendent of Prison
Madurai Central Prison,
Madurai District.
- 4.The Joint Secretary to Government,
Public(Law & Order),Fort St.George,
Chennai-600 009
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1367 of 2019
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AP(10/09/2020) 3P 6C