



WEB COPY

H.C.P(MD)No.82 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.82 of 2021

Pramila,
W/o.Kutty @ Chithamparam,
Thoppu Street,
Palliyur,
Papanasam Taluk,
Thanjavur District. ... Petitioner/Wife of the Detenu

vs.

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.
- 2.The District Collector and District Magistrate,
Thanjavur,
Thanjavur District.
- 3.The Superintendent,
Central Prison,
Trichy 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 records in pursuant to the proceedings of the second respondent in Detention Order passed in P.D.No.89/2020, dated 17.12.2020, quash the same and consequently direct the respondents to produce the petitioner's husband, namely Kutty @ Chidambaram, son of Thadi @ Srinivasan, aged about 50 years, at the time of passing detention order detained in Sub Jail, Thiruvidadaimaruthur, Thanjavur District (as a remand prisoner), now confined at Central Prison, Trichy, before this Court and set him at liberty.

For Petitioner : Mr.V.Kathirvelu
Senior Counsel
for Mr.S.Venkatesan
For Respondents : Mr.S.Ravi
Standing counsel for Government



O R D E R

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

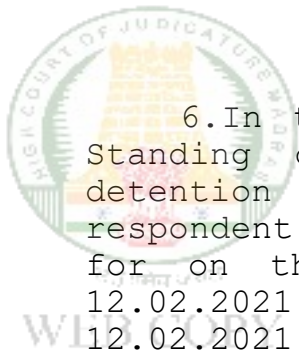
This Habeas Corpus Petition has been filed by wife of the detenu, namely, Kutty @ Chidambaram, son of Thadi @ Srinivasan, aged about 50 years, against the detention order passed by the second respondent, in P.D.No.89/2020, dated 17.12.2020, branding him as "Sand Offender" as contemplated under Section 3(1) of Tamil Nadu Act, 14 of 1982.

2.Mr.V.Kathirvelu, learned Senior Counsel representing Mr.S.Venkatesan, learned counsel appearing for the petitioner would argue that the detenu was arrested in the first, second adverse cases and ground case on 28.11.2020 and the arrest of the detenu was made in the third adverse case on P.T Warrant on 11.12.2020. However, in all the cases, there was no proper intimation of arrest either to the family members of the petitioner or his relatives. It is the submission of the learned Senior Counsel that the detaining authority has violated one of the directions issued by the Honourable Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**. It is next contended by the learned Senior Counsel that there is enormous and unexplained delay in considering the representation sent on behalf of the detenu.

3.Per contra, Mr.S.Ravi, learned Standing Counsel appearing for the Government vehemently opposed the case contending that though in the grounds of detention, the detenus involvement in four cases have been stated, but in fact, he has involved in 33 cases and he is also a history sheeter. The learned Standing Counsel while reiterating the counter-affidavit filed by the second respondent justified the detention order passed against the detenu in his argument. According to the learned Senior Counsel, there is no illegality or irregularity warranting interference of this Court.

4.Heard the learned counsel appearing on either side and perused the materials available on record.

5.A perusal of the booklet at page Nos.13, 52, 85 and 108, reveal that the arrest of the detenu was informed to his relatives through SMS, but there is no material to show that the cell phone belongs to the relatives of the detenu and the text messages have not been found place in the booklet. This Court, following the decision of the Honourable Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**, in several cases, has consistently held that if there is no proper intimation of arrest of the detenu either to his family members or his relatives, his valuable rights would seriously prejudiced on the sense that they will not have the opportunity to make effective representation to the Authority concerned in time for revocation of the detention order.



6.In the instant case, the proforma furnished by the learned Standing counsel would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent and it was received on 01.02.2021. Remarks were called for on the same day i.e. 01.02.2021 and it was received on 12.02.2021. The Deputy Secretary dealt with the matter on 12.02.2021. The concerned Minister dealt with the matter on 27.02.2021 and the representation came to be rejected on 27.02.2021. It is seen that in between 01.02.2021 and 12.02.2021, there was a delay of 8 days, after excluding the Government Holidays of 2 days and in between 12.02.2021 and 27.02.2021, there was a delay of 10 days, after excluding the Government Holidays of 4 days, in considering the petitioner's representation.

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 the Apex Court has 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.In the case on hand, as stated supra, the delay of 18 days in considering the representation of the petitioner 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.

9.In the light of the above facts and circumstances, we are convinced that the impugned detention order would not stand to the scrutiny of this Court and the same is, therefore, liable to be set aside.

10.In fine, the Habeas Corpus Petition is allowed. The detention order made in P.D.No.89/2020, dated 17.12.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Kutty @ Chidambaram, son of Thadi @ Srinivasan, aged about 50 years, who is now detained at Central Prison, Trichy, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

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 and District Magistrate,
Thanjavur,
Thanjavur District.
- 3.The Superintendent,
Central Prison,
Trichy District.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St.Goerge,
Chennai 600 009
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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DKS (CO)
KB (09.07.2021) 4P 6C