



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P. (MD) No.97 of 2021

WEB COPY

M.Raja

... Petitioner

-vs-

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

2.The District Collector Cum District Magistrate,
Theni, Theni District

3.The Superintendent of Prison,
Central Prison,
Madurai

... 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 pertaining to the detention order in Detention Order No.70/2020 dated 11.11.2020 passed by the 2nd respondent and set aside the same by setting the detenu by name Karthick, aged 31/2020 S/o.Selvaraj @ Raja and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : Mr.J.William Christopher

For Respondents : Mr.S.Ravi

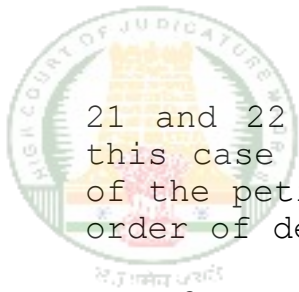
Standing counsel for Government

O R D E R

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

This habeas corpus petition has been filed by the father of the detenu, namely, Karthick S/o.Selvaraj @ Raja, aged about 31 years, challenging the detention order in Detention Order No.70/2020, dated 11.11.2020, passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

2. Mr.J.William Christopher, learned counsel for the petitioner, would argue that even though the petitioner has raised several grounds, apart from the ground of delay of 7 days in considering the representation, the learned counsel would submit that there is also non application of mind on the part of the detaining authority. It is submitted by the learned counsel for the petitioner that the procedural safeguards guaranteed under Articles



21 and 22 of the Constitution of India have not been followed in this case and there is unexplained and inordinate delay in disposal of the petitioner's representation, which would vitiate the impugned order of detention.

3. Mr.S.Ravi, learned standing counsel for the Government, on instructions, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. It is also stated that even if there is any delay in disposal of the representation, it has not caused any prejudice to the rights of the detenu and hence, prayed for dismissal of the habeas corpus petition.

4. Heard both sides and perused the materials available on record.

5. In the instant case, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 12.01.2021 and it was received on 18.01.2021. Remarks were called for on the same day i.e. 18.01.2021 and it was received on 01.02.2021. The Deputy Secretary dealt with the matter on 03.02.2021. The concerned Minister dealt with the matter on 05.02.2021 and the representation came to be rejected on 05.02.2021. It is seen that in between 18.01.2021 and 01.02.2021, there was a delay of 7 days, after excluding the Government Holidays of 6 days, in considering the petitioner's representation.

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 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.

7. In the case on hand, as stated supra, the delay of 10 days in considering the representation of the petitioner has not been properly explained by the respondents.

8. As far as the other ground is concerned, it is seen that the detenu is involved in only one case in Crime No.2079/2020 on the file of the Chinnamanur Police Station for the offence under Section 8(c) read with 20(b) (ii) (c) of NDPS Act. But in Paragraph No.4 of the grounds of detention, it has been stated that the detenu committed the offences continuously. When the detenu is involved in only one case mentioning that he is continuously committed offences shows lack of application of mind on the part of the detaining



authority.

9. Hence, in our considered view, the detention order is liable to be set aside on the ground of delay as well as non application of mind on the part of the detaining authority.

10. In fine, the Habeas Corpus Petition is allowed. The detention order in Detention Order No.77 of 2020, dated 11.11.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Ramar, S/o.Selvaraj @ Raja, aged about 31 years, who is 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 (AE)

// True Copy //

/ /2021

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.

RR

To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
- 2.The District Collector Cum District Magistrate,
Theni, Theni District.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The joint secretary to government,
Public(law&order),
Fort.st.George,
Chennai.

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



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5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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ORDER MADE IN

H.C.P. (MD) No.97 of 2021

07.06.2021

GS (17.06.2021) 4P 6C