



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :14.07.2021

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

H.C.P. (MD) No.106 of 2021

M.Gurulakshmi ... Petitioner/Wife of the detenu

-vs-

1.The State of Tamil Nadu,
represented by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli. ... 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 passed in H.S (M)Confdl.No.123 of 2020, dated 16.12.2020, on the file of the second respondent herein and to quash the same and to direct the respondents to produce the detenu or body of the detenu namely, the Petitioner's husband Ayyar @ Marimuthu, aged about 32 years, son of Shanmugaiah, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.S.Ravi,
Standing Counsel for the State



O R D E R

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

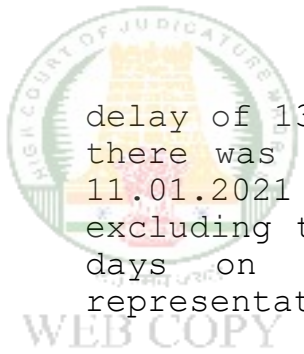
This habeas corpus petition has been filed by the wife of the detenu, namely, Ayyar @ Marimuthu, son of Shanmugaiah, aged about 32 years, challenging the detention order H.S(M)Confdl.No.123 of 2020, dated 16.12.2020, passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

2. Mr.N.Pragalathan, learned counsel for the petitioner, would argue that even though the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representation. 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 State, on instructions, would submit that apart from the adverse cases mentioned in the grounds of detention, the detenu has involved in 9 other cases. According to the learned Standing Counsel, two cases were registered under Section 307 of IPC, four cases under Section 387 and 506(i) of IPC and three cases under Section 323 and 506(ii) of IPC and he was acquitted in three cases and other cases are pending trial. It is the submission of the learned Standing Counsel that taking note of the antecedents of the detenu, the second respondent has rightly clamped the detention order. It is further 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 pro-forma furnished by the learned Standing Counsel for the State, appearing for the respondents, would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent dated Nil and it was received on 28.12.2020. Remarks were called for on the same day i.e. 28.12.2020 and it was received on 11.01.2021. The Deputy Secretary dealt with the matter on 11.01.2021. The concerned Minister dealt with the matter on 15.1.2021 and the representation came to be rejected on 18.01.2021. It is seen that in between 28.12.2020 and 11.01.2021, there was a



delay of 13 days, after excluding the Government Holidays of 5 days, there was a delay of 8 days in the first part and also in between 11.01.2021 and 15.01.2021, there was a delay of 3 days and after excluding the Government Holiday of one day, there was a delay of 2 days on the second part, 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 8 days in the first part and two days in the second part, in considering the representation of the petitioner remains unexplained 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.

8. In fine, the Habeas Corpus Petition is allowed. The detention order in H.S(M)Confdl.No.123 of 2020, dated 16.12.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Ayyar @ Marimuthu, son of Shanmugaiah, aged about 32 years, who is now detained at Central Prison, Palayamkottai is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsn

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,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Government, Public (Law & order) Department,
Fort St. George, Chennai-9.

**H.C.P. (MD) No.106 of 2021
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MGJ(26.07.2021) 4P 6C