



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2021

CORAM:

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

**THE HONOURABLE MR.JUSTICE G.ILANGOVAN
H.C.P. (MD) No.268 of 2021**

Sarmila

... Petitioner

-vs-

1.State of Tamil Nadu

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

2.The District Collector and the District Magistrate,
Theni District,
Theni.

3.The Superintendent of Prison,
Central Prison Madurai ,
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 entire records leading to the detention order of the petitioner's husband namely, Ramar S/o.Ammavasai, aged about 37 years, vide made in Detention Order No.55 of 2020, dated 08.10.2020 passed by the 2nd respondent and quash the same and consequently direct the respondent to produce the body and person of the detenu namely Ramar S/o.Ammavasai, aged about 37 years (now confined at Central Prison, Madurai) before this Court and set him at liberty.

For Petitioner :Mr.B.Pandiarajan

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 wife of the detenu, namely, Ramar, S/o.Ammavasai, aged about 37 years, challenging the detention order in Detention Order No.55 of 2020, dated 08.10.2020, 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.B.Pandiarajan, 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.

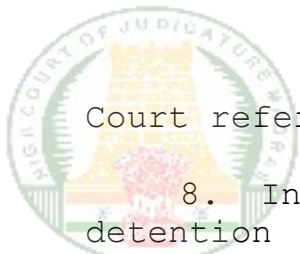
3. Mr.S.Ravi, learned standing counsel for the Government, on instructions, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. It is also stated that 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 01.02.2021 and it was received on 03.02.2021. Remarks were called for on the same day i.e. 03.02.2021 and it was received on 13.02.2021. The Deputy Secretary dealt with the matter on 15.02.2021. 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 15.02.2021 and 27.02.2021, there was a delay of 10 days, after excluding the Government Holidays of 2 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. 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 Detention Order No.55/2020, dated 08.10.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Ramar, S/o.Ammavasai, aged about 37 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 (CSII)

// 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,
Secretariat,
Chennai-600 009.
- 2.The District Collector and the District Magistrate,
Theni District,
Theni.
- 3.The Superintendent of Prison,
Central Prison Madurai ,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN

H.C.P. (MD) No.268 of 2021

09.06.2021