



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2021

CORAM:

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

H.C.P. (MD) No.203 of 2021

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... Petitioner/Brother of the detenu

-vs-

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Tenkasi District,
Tenkasi-11.

3.The Superintendent,
Palayamkottai Central Prison,
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 of the second respondent in M.H.S.Confdl.No.03 of 2021, dated 25.1.2021 and to quash the same and to direct the respondents to produce the Petitioner's brother's body and person by name Jaffer Ali, son of Sarputhin, aged about 47 years, detained as ''Sexual Offender'' and lodged in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

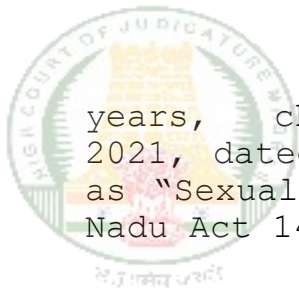
For Petitioner : Mr.R.Venkatesan

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 brother of the detenu, namely, Jaffer Ali, son of Sarputhin, aged about 47



years, challenging the detention order in M.H.S.Confdl.No.03 of 2021, dated 25.1.2021, passed by the second respondent, branding him as "Sexual Offender" as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982.

2. Mr.R.Venkatesan 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, 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 would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 4.2.2021 and it was received on 8.2.2021. Remarks were called for on the same day i.e. 8.2.2021 and it was received on 3.3.2021. The Deputy Secretary dealt with the matter on 3.3.2021. The concerned Minister dealt with the matter on 12.4.2021 and the representation came to be rejected on 15.4.2021. It is seen that in between 8.2.2021 and 3.3.2021, there was a delay of 24 days, after excluding the Government Holidays of 9 days, there was a delay of 15 days in the first part and in between 3.3.2021 and 12.4.2021, there was a delay of 39 days and after excluding the Government Holidays of 16 days, there was a delay of 23 days in 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 38 days 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 M.H.S.Confdl.No.03 of 2021, dated 25.1.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Jaffer Ali, son of Sarputhin, aged about 47 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 (CS I)

// 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,
Home, Prohibition and Excise Department,
Secretariat,
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Tirunelveli.

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



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

5.The Joint Secretary to Government,
Public (Law & order)
Fort St. George,
Chennai-9.

H.C.P. (MD) No.203 of 2021
30.07.2021

MGJ(06.08.2021) 4P 5C