



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P.(MD) No.251 of 2021

Kaliammal

... Petitioner/Mother
of detenu

-vs-

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

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Ramanathapuram District.

3. The Superintendant of Prison,
Madurai Central Prison,
Madurai 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 entire records, connected with the detention order of the Respondent No.2 in TN.P.D.A.B.C.D.F.G.I.S.S.S.V.No.3/D.O/2021 dated 20.01.2021 and quash the same and direct the respondents to produce the body or person of the detenu by name Akkapore @ Vilvanathan, son of Selvamoorthi, aged about 23 years, now detained as "Drug Offender" at Madurai Central Prison before this Hon'ble court and set him at liberty forthwith.

For Petitioner : Mr.S.Selvakumar

For Respondents : Mr.S.Ravi

Standing counsel for the State

O R D E R

(Order of the Court was made by J.NISHA BANU, J.)

This Habeas Corpus etition has been filed by the Mother of the detenu, namely, Akkapore @ Vilvanathan, S/o.Selvamoorthi, aged about 23 years, challenging the detention order in TN.P.D.A.B.C.D.F.G.I.S.S.S.V.No.3/D.O/2021 dated 20.01.2021, passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

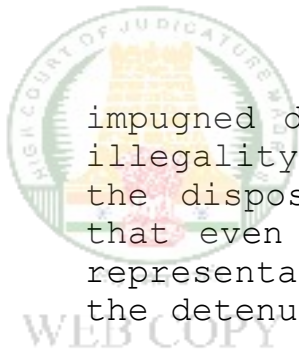


2. Mr.S.Selvakumar, the learned counsel appearing for the petitioner assails the detention order mainly on the following grounds:-

(i) The detaining authority has prejudged the order of the Court relating to the pending bail application; (ii) The Tamil and English version of the grounds of detention differs; (iii) In the Tamil version of the grounds of detention, the detenu has been mentioned as a habitual offender, whereas the detenu is not a habitual offender; (iv) The acts of the detenu is prejudicial to the maintenance of public order, but there is no cogent materials relating to the said statement; (v) Non-application of mind on the part of the detaining authority, while passing the detention order; (vi) The reason for pick and choose the detenu and another for passing detention order not explained by the detaining authority; (vii) The detention order is bad in law and liable to be vitiated for non-compliance of Section 3(3) of Act 14 of 1982. (viii) There is a delay of 43 days in passing the detention order; (ix) The detenu could not able to submit effective representation, since the Authority failed to supply all relied and referred documents to the detenu, and therefore, it is clear violation of Article 22(5) of the Indian Constitution; (x) The pages in the booklet are illegible and therefore, the detenu cannot able to understand the said page and prefer an effective representation to the Authority; (xi) The ground case registered against the detenu is under NDPS Act and when regular penal law is available for deal the detenu, passed the impugned detention order, which is against the dictum laid down by the Three Judge Bench of the Hon'ble Supreme Court in Reka Vs. State of Tamil Nadu; (xii) The arrest and place of detention order was not intimated properly to the detenu's relative, which is against the principles laid down by the Hon'ble Supreme Court in D.K.Basu Vs. state of West Bengal.

3. Even though the petitioner has raised the above grounds to quash the impugned detention order, the learned counsel for the petitioner would mainly place arguments on the ground of delay in disposal of the petitioner's representation. In this regard, the learned counsel for the petitioner would state 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. Thus, he would pray to quash the impugned order of detention.

4. The learned Standing Counsel appearing for the respondents would state that after satisfying with the materials placed by the sponsoring authority, the detaining authority has passed the



impugned detention order and therefore, there is no infirmity or illegality in the same. He would produce the proforma regarding the disposal of the petitioner's representation and would state that even if there is any delay in disposal of the petitioner's representation, it has not caused any prejudice to the rights of the detenu. Thus, he would pray for dismissal of this petition.

5. Heard the learned counsel for the petitioner as well as the respondents.

6. Perusal of the proforma produced by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner has made a representation to the 1st respondent on 19.04.2021, which was received on 28.04.2021. Remarks on the said representation were called for on 28.04.2021 and it was received on 10.05.2021. The Deputy Secretary concerned has dealt with the representation on 12.05.2021 and the Hon'ble Minister concerned has dealt with the representation on 15.05.2021 and finally, the representation came to be rejected on 07.06.2021. It is seen that in between 28.04.2021 and 10.05.2021, there was a delay of 11 days and after excluding 4 Government Holidays, there was a delay of 7 days in the first part and in between 15.05.2021 and 07.06.2021, there was a delay of **21** days. After excluding the Government Holidays of 7 days, there was a delay of 14 days in the second part, in total, there was a delay of 21 days, in considering the petitioner's representation.

7. At this juncture, it is useful to refer to the decision of the Hon'ble Supreme Court in the case of **Rajammal vs. State of Tamil Nadu and another** reported in **1999 (1) CC 417**, wherein, the Apex Court has held that it is for the authority concerned to explain the delay, if any, in disposal of the representation of the detenu and if any delay was caused on account of any 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 **21** days in considering the representation of the petitioner remains unexplained by the respondents. Hence, in our considered view, the impugned detention order is liable to be set aside solely on the ground of delay by following the above decision of the Apex Court.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in TN.P.D.A.B.C.D.F.G.I.S.S.S.V.No.3/D.O/2021 dated 20.01.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Akkapore @ Vilvanathan, S/o Selvamogathi, aged about 23 years, who is now detained at



Madurai 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 (CS I)

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/ /2021

Sub Assistant Registrar(CS)

MPK

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,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
- 2.The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai - 600 009.
- 3.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Ramanathapuram District.
4. The Superintendant of Prison,
Madurai Central Prison,
Madurai District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.251 of 2021
16.08.2021

PS (CO)

SB(27-08-2021) 4P 6C

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