



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :28.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.290 of 2021

Thanga Rani

... Petitioner/wife of the detenu

-Vs-

1. The Principal Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Exercise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Kanyakumari District,
Nagercoil.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli District.

...Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the records of the detention order passed by the second respondent vide his proceedings in P.D.No.50/2020 dated 31.12.2020 and quash the same as illegal and to direct the respondents to produce the body or person of the detenu namely Jebastiyam Raj, S/o. Amalraj, aged 38 years, now detained at Central Prison, Palayamkottai, Tirunelveli District before this court and set him at liberty.

For Petitioner :Mr.L.George Paul Anto

For Respondents :Mr.Ravi
Additional Public Prosecutor

O R D E R

(Order of the Court was made by V.BHARATHIDASAN, J.)

This habeas corpus petition has been filed by the wife of the detenu, namely, Jebastiyam Raj, aged 38 years, challenging the detention order in P.D.No.50/2020 dated 31.12.2020, passed by the second respondent, branding him as "Sexual Offender" as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982.



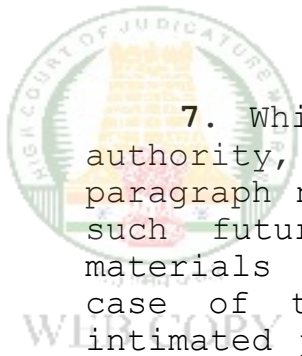
2. The learned counsel for the petitioner submits that the second respondent has miserably failed to express his satisfaction with regard to the possibility of the detenu coming out on bail in the ground case, which is fatal to the order of detention. He would further submit that the detaining authority mentioned in paragraph No.5 of the detention order that no bail application is filed by the detenu and while arriving satisfaction came to the conclusion, the detaining authority stated that the detenu may file bail application in future and there is real possibility of the detenu coming out on bail by filing bail petition before the lower court or High Court, which would clearly reflect the non-application of mind on the part of the detaining authority.

3. The learned counsel for the petitioner further submits that the detaining authority mechanically came to the conclusion relating to the possibility of the detenu for coming out on bail in the ground case by placing reliance on the bail order for some other accused person, which is not similar to the ground case. The Hon'ble Apex Court repeatedly held that the bail order granted to some other accused person in some other case is not a cogent material for arriving the subjective satisfaction relating to the possibility of the detenu for coming out on bail in the ground case.

4. Further contentions of the learned counsel for the petitioner are that the petitioner sent a representation to the first respondent on 27.1.2021 requesting him to supply the grounds and booklet and the same was not considered by the first respondent expeditiously which is violation of Section 3(3) of Act No.14 of 1982.

5. The learned counsel for the petitioner, while projecting the delay on the part of the first respondent, has drawn the attention of this Court to Section 10 of the TamilNadu Act No.14 of 1982, which reads as that the first respondent shall place all relevant documents relating to the detention order before the Advisory Board within three weeks from the date of detention. According to the learned counsel for the petitioner, there is no cogent material to reveal that on which date the first respondent placed all documents relating to the detention before the Advisory Board and on which date the Advisory Board received the same and therefore, without the said particulars, it could not be said that the mandatory provisions are followed by the authorities.

6. The learned counsel would vehemently contend that the detenu was arrested on 03.12.2020, the detaining authority passed detention order against the detenu with 27 days delay i.e on 31.12.2020 and the reason for the delay has not been explained by the detaining authority in the grounds of detention and booklet.



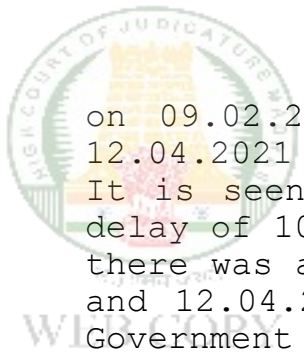
7. While pinpointing the prejudging attitude of the detaining authority, the learned counsel submits that it is mentioned in paragraph number 5 that if he comes out on bail, he will indulge in such future activities and there are no corresponding cogent materials in the booklet relating to the said statement. Further case of the petitioner is that arrest and detention was not intimated properly to the detenu's family members and there is no cogent materials relating to the communication of the arrest and place of the detention to the family members of the detenu. The sponsoring authority failed to follow the principles laid down by the Hon'ble Supreme Court in **D.K.Basub-vs-State of West Bengal and A.K.Roy** Cases while arresting and detaining the detenu. The learned counsel also submits that there are no cogent materials to arrive at the subjective satisfaction and there is also no material to show that the activities of the detenu is prejudicial to the maintenance of public law and order to brand him as ''sexual offender''.

8. 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.

9. The learned Additional Public Prosecutor 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.

10. Heard the learned counsel appearing on behalf of the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondents.

11. Though several points raised in the HCP, Perusal of the proforma furnished by the learned Additional Public Prosecutor appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent dated 27.01.2021 and it was received on 29.01.2021. Remarks were called for on 29.01.2021 and it was received on 09.02.2021. The Deputy Secretary dealt with the matter



on 09.02.2021. The concerned Minister dealt with the matter on 12.04.2021 and the representation came to be rejected on 15.04.2021. It is seen that in between 29.01.2021 and 09.02.2021, there was a delay of 10 days, after excluding the Government Holidays of 4 days, there was a delay of 6 days in the I part and in between 09.02.2021 and 12.04.2021, there was a delay of 61 days, after excluding the Government Holidays of 22 days, there was a delay of 39 days in the II Part and totally there was a delay of 45 days in considering the petitioner's representation.

12. 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.

13. In the case on hand, as stated supra, the delay of 45 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 above decision of the Apex Court.

14. In fine, the Habeas Corpus Petition is allowed. The detention order in P.D.No.50/2020 dated 31.12.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Jebastiyar Raj, S/o. Amalraj, aged 38 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 (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CM

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

H.C.P. (MD) No.290 of 2021
28.09.2021

MGJ(02.12.2021) 5P 6C