



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.299 of 2021

M.Maldurai ... Petitioner/ Father of Detenu
vs.

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and
District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.
- 4.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
- 5.The Inspector of Police,
All Women Police Station,
Thiruchendur,
Thoothukudi 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 in H.S.(M). confdl.No.62/2020 dated 25.08.2020 passed by the second respondent and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Rajan @ MahaliRajan, aged about 23 years S/o.Maldurai, now confined at Central Prison, Palayamkottai, Tirunelveli before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.V.Angusamy
For Respondents : Mr.S.Ravi
Standing counsel for Government



O R D E R

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

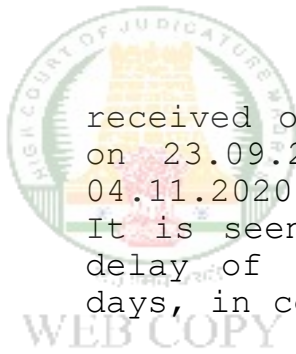
This habeas corpus petition has been filed by the father of the detenu, namely, Rajan @ MahaliRajan, S/o.Maldurai, aged about 23 years, against the detention order passed by the second respondent, in H.S.(M).confdl.No.62/2020 dated 25.08.2020, branding him as 'Sexual Offender' as contemplated under Section 2(ggg) of Tamil Nadu Act, 14 of 1982.

2. Mr.V.Angusamy, learned counsel appearing for the petitioner, would argue that the detenu has not filed any bail application. However, the Detaining Authority, to arrive at the subjective satisfaction, has stated that in a similar case, bail was granted to some other person. It is the submission of the learned counsel for the petitioner that when no bail petition has been filed by the detenu in the remanded case, the subjective satisfaction reached by the Detaining Authority is without any basis and there is no imminent possibility of the detenu coming out on bail by filing bail petition before the appropriate Court. Further, he would submit that the similar case relied on by the Detaining Authority is not similar to the case of the detenu. In addition to that, the first and second respondents have failed to place the relevant materials before the Advisory Board within a period of three weeks from the date of detention. Even though the learned counsel for 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 appearing for the respondents, 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 the learned counsel appearing on either side and perused the materials available on record.

5. In the instant case, the proforma furnished by the learned Standing counsel would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 07.09.2020 and it was received on 11.09.2020. Remarks were called for on the same day i.e., on 11.09.2020 and it was



received on 23.09.2020. The Deputy Secretary dealt with the matter on 23.09.2020. The concerned Minister dealt with the matter on 04.11.2020 and the representation came to be rejected on 06.11.2020. It is seen that in between 23.09.2020 and 04.11.2020, there was a delay of 31 days, after excluding the Government Holidays of 10 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 31 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 made in Detention Order in H.S.(M).confdl.No.62/2020 dated 25.08.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Rajan @ MahaliRajan S/o.Maldurai, aged about 23 years, who is now detained at Central Prison, Palayamkottai, Tirunelveli is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (C.O)

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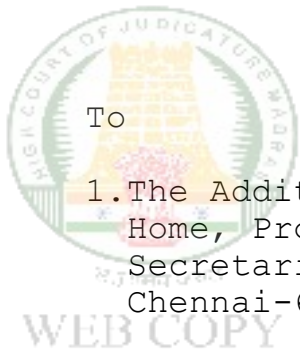
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Sub Assistant Registrar(CS)

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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,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and
District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Joint Secretary to Government,
Public (Law and Order),
Fort. St.George,
Chennai-9
- 4.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.
- 5.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
- 6.The Inspector of Police,
All Women Police Station,
Thiruchendur,
Thoothukudi District.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.299 of 2021
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GC (01.09.2021)/4P/8C