



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.384 of 2021

Santhi Mary

... Petitioner/ Wife of Detenu

vs.

1. State, Rep. by

The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2. The District Collector/ District Magistrate,
Thoothukudi District,
Thoothukudi.

3. The Superintendent,
Central Prison,
Palayamkottai.

... 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 records in H.S.(M) Confdl. No.88/2020 dated 15.10.2020 and directing the respondents herein to produce the detenu namely Yesuraj, S/o.Muthaiah, aged 48 years, who has been termed as "Sexual Offender" and now confined in Central Prison, Palayamkottai and set aside the same and set the detenu at liberty.

For Petitioner : Mr.A.S.Vaigunth

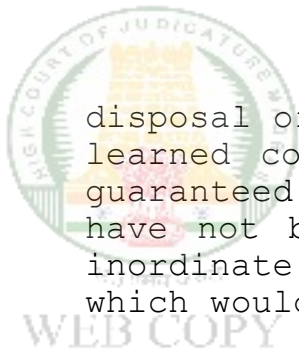
For Respondents : Mr.S.Ravi
Standing counsel for Government

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 wife of the detenu, namely, Yesuraj, S/o.Muthaiah, aged about 48 years, against the detention order passed by the second respondent, in H.S(M) Confdl.No.88/2020 dated 15.10.2020, branding him as 'Sexual Offender' as contemplated under Section 2(ggg) of the Tamil Nadu Act, 14 of 1982.

2. Mr.A.S.Vaigunth, learned counsel appearing 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 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.

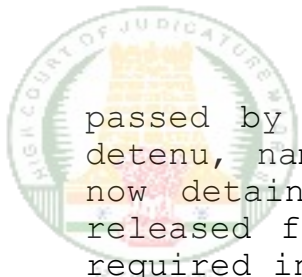
4. Heard the learned counsel appearing on either side and perused the materials available on record.

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 Nil** and it was received on 31.10.2020. Remarks were called for on the same day i.e., on 31.10.2020 and it was received on 17.11.2020. The Deputy Secretary dealt with the matter on 18.11.2020. The concerned Minister dealt with the matter on 23.11.2020 and the representation came to be rejected on 23.11.2020. It is seen that in between 31.10.2020 and 17.11.2020 and in between 18.11.2020 and 23.11.2020, there was a delay of 11 days, after excluding the Government Holidays of 9 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 11 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 H.S.(M) Confdl.No. 88/2020 dated 15.10.2020,
<https://hcservices.ecourts.gov.in/hcservices/>



passed by the second respondent, is set aside. Consequently, the detenu, namely, Yesuraj, S/o.Muthaiah, aged about 48 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-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

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 - 9.
2. The District Collector/ District Magistrate,
Thoothukudi District,
Thoothukudi.
3. The Superintendent,
Central Prison,
Palayamkottai.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort saint George,
Chennai-600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.384 of 2021
23.08.2021

RD(13.09.2021) 3P 6C