



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.380 of 2021

Deepa ... Petitioner/ Wife of Detenu
vs.

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

2.The District Collector cum District Magistrate,
Theni,
Theni District.

3.The Superintendent of Prison,
Central Prison,
Madurai,
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 records pertaining to the detention order in Detention Order No.06/2021 dated 05.02.2021 passed by the second respondent and set-aside the same as illegal by setting the detenu by name Malaisamy, S/o. Thangam, aged about 36 years at his liberty, now detain at Central Prison, Madurai.

For Petitioner : Mr.K.Sivabalan

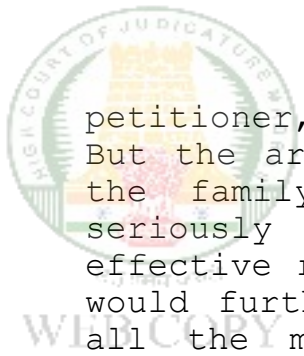
For Respondents : Mr.S.Ravi
Standing counsel for Government

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, Malaisamy, S/o.Thangam, aged about 36 years, against the detention order passed by the second respondent, in Detention Order No.06 of 2021 dated 05.02.2021, branding him as 'Drug Offender' as contemplated under Section 2(e) of the Tamil Nadu Act, 14 of 1982.

<https://hcservices.courts.gov.in/hcservices> Mr.K.Sivabalan, learned counsel appearing for the



petitioner, would argue that the detenu was arrested on 06.01.2021. But the arrest of the detenu was not properly intimated to either the family members or the relatives of the petitioner which seriously affected the valuable right of the detenu to make effective representation for revocation of the detention order. He would further submit that the Sponsoring Authority has not placed all the material documents before the Detaining Authority. In addition to that, the remand order as well as extension of remand in ground case and one adverse case have not been supplied to the detenu. 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 08.03.2021 and it was received on 10.03.2021. Remarks were called for on 11.03.2021 and it was received on 12.04.2021. The Deputy Secretary dealt with the matter on 12.04.2021. The concerned Minister dealt with the matter on 19.04.2021 and the representation came to be rejected on 19.04.2021. It is seen that in between 11.03.2021 and 12.04.2021 and in between 12.04.2021 and 19.04.2021, there was a delay of 10 days, after excluding the Government Holidays of 16 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 10 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 No.06 of 2021, dated 05.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Malaisamy, S/o.Thangam, aged about 36 years, who is now detained at 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 (CRL)

// 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-600 009.
- 2.The District Collector cum District Magistrate,
Theni, Theni District.
- 3.The Superintendent of Prison,
Central Prison,
Madurai,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



5.The Joint Secretary to Government,
Public (Law & Order),
Fort saint George,
Chennai-600 009.

+1 CC to M/s.K.SIVABALAN, Advocate (SR-26845[F] dated 19/08/2021)

H.C.P. (MD) No.380 of 2021

18.08.2021

RD(13.09.2021) 4P 7C