



WEB COPY

H.C.P.(MD) No.415 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P. (MD) No.415 of 2021

Sathiyamoorthy

... Petitioner

-VS-

1.State represented by,
The District Collector and
District Magistrate,
Pudukottai District,
Pudukottai.

2.The Additional Chief Secretary to Government,
Home, Prohibition and Exercise Department,
Fort St. George, Chennai-9.

3.State represented by
The Superintendent of Prison,
Central Prison,
Trichy,
Trichy District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records from the first respondent in P.D.O.No.08/2021, dated 20.02.2021 by setting aside the said order or detention passed by the first respondent and setting the detenu Ananth, 29 years old, S/o.Sathiyamoorthy, at liberty now detained in the Central Prison, Trichy.

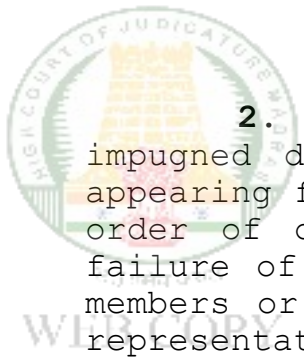
For Petitioner :Mr.V.Karthirvelu
Senior Counsel
for Mr.G.Mathavan

For Respondents :Mr.S.Ravi
Standing Counsel for the Government

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This habeas corpus petition has been filed by the father of the detenu, namely, Ananth, son of Sathiyamoorthi, aged about 29 years, against the detention order passed by the first respondent, in P.D.O.No.08/2021, dated 20.02.2021, branding him as "SAND OFFENDER" as contemplated under Section 2(gg) of Tamil Nadu Act, 14 of 1982.



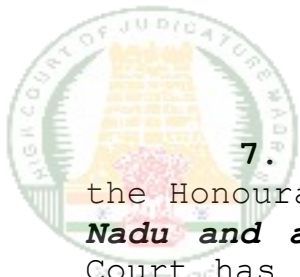
2. Though several grounds have been raised challenging the impugned detention order, Mr.V.Kathirvelu, learned Senior Counsel appearing for the petitioner, would mainly contend that the impugned order of detention is liable to be set aside on the grounds of failure of intimation of arrest of the detenu either to his family members or his relatives and delay in considering the petitioner's representation.

3. Per contra, Mr.S.Ravi, learned Standing Counsel appearing for the respondents, on instructions, submitted that the detention order has been rightly passed by the first respondent taking note of the activities of the detenu and it has been passed to prevent the detenu from indulging in similar activities in future. It is the further submission of the learned Standing Counsel appearing for the respondents that the arrest of the detenu has been properly intimated to his family members and the delay in disposal of the representation has not caused any prejudice to the detenu and hence, prayed for dismissal of the habeas corpus petition.

4. We have heard the rival submissions and perused the materials placed on record.

5. In the case on hand, though it is contended by the learned Standing Counsel appearing for the respondents that the arrest of the detenu has been properly intimated to the family members of the detenu, a perusal of Page No.23 of the booklet would show that the arrest of the detenu in the ground case on 16.02.2021 was intimated to Cell No.9626444068, but there is nothing on record to show that said cell number belongs to the family members or relatives of the detenu. This Court, following the decision of the Honourable Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**, in several cases, has consistently held that if there is no proper intimation of arrest of the detenu either to his family members or his relatives, his valuable rights would be seriously prejudiced on the sense that they will not have the opportunity to make effective representation to the Authority concerned in time for revocation of the detention order.

6. Further, it is seen from the proforma furnished by the learned Standing Counsel appearing for the respondents that the representation of the petitioner, dated 05.03.2021, was received on 08.03.2021. Remarks were called for on 08.03.2021 and it was received on 25.03.2021. The Deputy Secretary dealt with the matter on 26.03.2021. The concerned Minister dealt with the matter on 12.04.2021 and the representation came to be rejected on 16.04.2021. It is seen that in between 08.03.2021 and 25.03.2021, there was a delay of 16 days, after excluding the Government Holidays of 5 days, there was a delay of 11 days in considering the petitioner's representation.



7. 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.

8. In the case on hand, as stated supra, the delay of 11 days has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the grounds as stated above by following the decisions of the Honourable Apex Court referred supra.

9. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the first respondent, in P.D.O.No.08/2021, dated 20.02.2021, is set aside. Consequently, the detenu, namely, Ananth, son of Sathiyamoorthi, aged about 29 years, who is now detained at Central Prison, Tiruchirappalli is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

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 District Collector and
District Magistrate,
Pudukottai District,
Pudukottai.



2.The Additional Chief Secretary to Government,
Home, Prohibition and Exercise Department,
Fort St. George, Chennai-9.

3.The Superintendent of Prison,
Central Prison,
Trichy,
Trichy District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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