



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :26.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.437 of 2021

Sudha

... Petitioner/wife of the detenu

-vs-

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

2.The District Collector and District Magistrate,
Office of the District Collector,
Tirunelveli District.

3.The Superintendent of Prison,
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 calling for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings in M.H.S.Confdl.No.23 of 2021, dated 13.3.2021 in detaining the detenu under Section 2(gg) of the Tamil Nadu Act 14 of 1982 as a SAND OFFENDER and to quash the same and to direct the respondents to produce the detenu namely, Ayyappan, son of Malraj, Male, aged about 37 years, who is detained in Central Prison, Palayamkottai before this Court and set him at liberty.

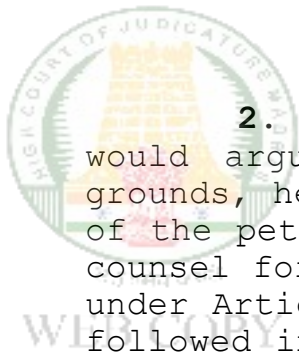
For Petitioner : Mr.K.M.Karunakaran
for M/s.A.Banumathy

For Respondents : Mr.S.Ravi,
Standing Counsel for the State

O R D E R

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

This habeas corpus petition has been filed by the wife of the detenu, namely, Ayyappan, son of Malraj, aged about 37 years, challenging the detention order in M.H.S.Confdl.No.23 of 2021, dated 13.3.2021, passed by the second respondent, branding him as "Sand Offender " as contemplated under Section 2(gg) of Tamil Nadu Act 14 of 1982.



2. Mr.K.M.Karunakaran, learned counsel 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 for the State, 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 both sides and perused the materials available on record.

5. In the instant case, the pro-forma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 17.3.2021 and it was received on 19.3.2021. Remarks were called for on the same day i.e. 19.03.2021 and it was received on 5.5.2021. The Deputy Secretary dealt with the matter on 10.5.2021. The concerned Minister dealt with the matter on 12.05.2021 and the representation came to be rejected on 07.06.2021. It is seen that in between 19.3.2021 and 5.5.2021, there was a delay of 46 days, after excluding the Government Holidays of 21 days, there was a delay of 21 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 25 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 decision of the Honourable Apex Court referred supra.



8. In fine, the Habeas Corpus Petition is allowed. The detention order in M.H.S.Confdl.No.23 of 2021, dated 13.3.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Ayyappan, son of Malraj, aged about 37 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-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsn

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 the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector,
Tirunelveli District.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai
- 4.The Joint Secretary to Government,
Public Law and Order,
Fort St. George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.437 of 2021
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LS (CO)
LR (03.08.2021) 3P 6C