



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD)No.448 of 2021

S.Alamelu

... Petitioner/ Mother of the Detenu

Vs.

1.The State of Tamil Nadu, rep.by

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

2.The District Magistrate and District Collector,
O/o.District Magistrate and District Collector,
Pudukkottai District,
Pudukkottai.

3.The Superintendant,
Central Prison,
Tiruchirappalli.

... 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 in detention order passed in P.D.O.No.05/2021 dated 13.02.2021 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Krishnamoorthy, S/o.Shanmugam, male, aged 22 years, who is detained in Central Prison, Tiruchirappalli, before this Court.

For Petitioner : Mr.K.A.S.Prabhu

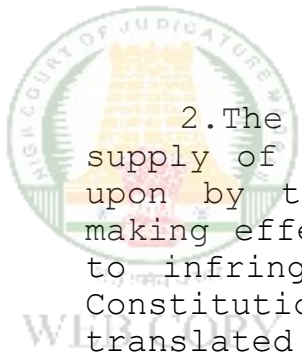
For Respondents : Mr.S.Ravi

Additional Public Prosecutor

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 mother of the detenu, namely Krishnamoorthy, S/o.Shanmugam, aged about 22 years, challenging the detention order in P.D.O.No.05/2021, dated 13.02.2021, passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.



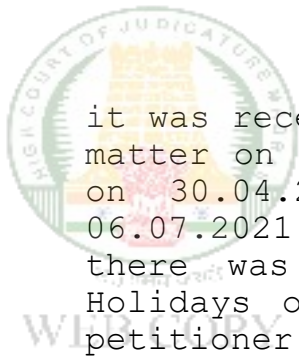
2.The learned counsel for the petitioner would state that non supply of translated version of vital documents, which were relied upon by the detaining authority, would deprive the detenu from making effective representation to the authorities and would amount to infringement of right guaranteed under Article 22(5) of the Constitution of India. Some of the pages are in English and the translated copy of the same were not furnished. The arrest was not properly intimated to the relatives or friends of the detenu. The detaining authority stated that further resource to the normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order and public health and further satisfied that there is a compelling necessity to detain him under the prevention of Tamil Nadu Act 14 of 1982 without any proper material and also failed to mention about the proper similar case in the grounds of detention and also failed to furnish entire materials with regard to similar case in the booklet given to the detenu. It shows that the detaining authority has failed to their subjective satisfaction. There is an inordinate delay in considering the petitioner's representation.

3.The learned Additional Public Prosecutor appearing for the respondents would state that after satisfying with the materials placed by the sponsoring authority, the detaining authority has passed the impugned detention order and therefore, there is no infirmity or illegality in the same. He would produce the proforma regarding the disposal of the petitioner's representation and would state that even if there is any delay in disposal of the petitioner's representation, it has not caused any prejudice to the rights of the detenu. Thus, he would pray for dismissal of this petition.

4.Heard the learned counsel for the petitioner as well as the respondents.

5.Even though the petitioner has raised the above grounds to quash the impugned detention order, the learned counsel for the petitioner would mainly place arguments on the ground of delay in disposal of the petitioner's representation. In this regard, the learned counsel for the petitioner would state 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.

6.Perusal of the proforma furnished by the learned Additional Public Prosecutor appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent dated 18.03.2021 and it was received on 22.03.2021. Remarks were called for on 22.03.2021 and



it was received on 29.04.2021. The Deputy Secretary dealt with the matter on 29.04.2021. The concerned Minister dealt with the matter on 30.04.2021 and the representation came to be rejected on 06.07.2021. It is seen that in between 22.03.2021 and 29.04.2021, there was a delay of 37 days, after excluding the Government Holidays of 16 days, there was a delay of 21 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 21 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 above decision of the Apex Court.

9.In fine, the Habeas Corpus Petition is allowed. The detention order in P.D.O.No.05/2021, dated 13.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Krishnamoorthy, S/o.Shanmugam, aged about 22 years, who is now detained at Central Prison, Trichirappalli, 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)

mpk

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 Government,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George,
Chennai-9.
- 3.The District Magistrate and District Collector,
O/o.District Magistrate and District Collector,
Pudukkottai District,
Pudukkottai.
- 4.The Superintendant,
Central Prison,
Tiruchirappalli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No. 448 of 2021
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KS (CO) /RS (20.10.2021) 4P 6C