



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :27.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.526 of 2021

Parthiban

... Petitioner/detenu

-vs-

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

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

3. The Superintendent of Prison,
Central Prison,
Madurai.

... 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, connected with the detention order passed in Detention Order No.12/2021, dated 04.03.2021 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu by namely, Parthiban, aged about 27 years, S/o. Sivakumar, now detained at the Central Prison, Madurai, before this court and set him at liberty.

For Petitioner : Mr.N.Pragalathan

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 detenu, namely Parthiban, S/o. Sivakumar, aged 27 years, challenging the detention order in No.12/2021 dated 04.03.2021 passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.



2. Mr.N.Pragalathan, learned counsel appearing for the petitioner, would submit that the Detaining Authority, to arrive at the subjective satisfaction, has stated that in a similar case, bail was granted to some other person. It is the submission of the learned counsel for the petitioner that the similar case relied on by the Detaining Authority is not similar to the case of the detenu and moreover, the arrest of the detenu was not properly intimated to his relatives. In addition to that, the Detaining Authority has passed the detention order, by relying upon the order issued by the Government, but the said Government Order was not given to the detenu.

3. Mr.S.Ravi, learned Additional Public Prosecutor appearing 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.

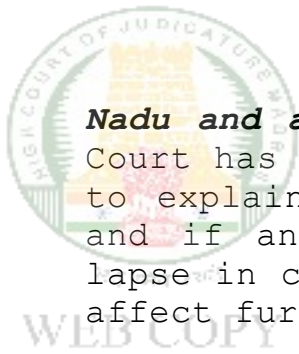
4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. 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.

6. In the instant case, the proforma 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 20.03.2021 and it was received on 05.04.2021. Remarks were called for on the same day ie., on 05.04.2021 and it was received on 11.05.2021. The Deputy Secretary dealt with the matter on 18.05.2021. The concerned Minister dealt with the matter on 26.07.2021 and the representation came to be rejected on 26.07.2021. It is seen that in between 05.04.2021 and 11.05.2021, there was a delay of 22 days, after excluding the Government Holidays of 13 days, in considering the petitioner's representation.

7. At this juncture, it is useful to refer the decision of the Honorable Apex Court in the case of **Rajammal vs. State of Tamil**

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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 22 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.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in No.12/2021 dated 04.03.2021 , passed by the second respondent, is set aside. Consequently, the detenu, namely, Parthiban, son of Sivakumar, aged about 27 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 (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,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.



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

3. The Superintendent of Prison,
Central Prison,
Madurai.

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

Copy to

The Joint Secretary to Government,
Public(Law & Order),
Government of TamilNadu,
Fort St.George, Chennai-9

H.C.P. (MD) No.526 of 2021
DATED : 27.09.2021

PS (CO)
SB(21.10.2021) 4P 6C