



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.565 of 2021

Mayakkal

... Petitioner/mother of the detenue

-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,
Tanjavur District,
Tanjavur.
- 3.The Superintendent of Prison,
Central Prison,
Thiruchirappalli. ... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the records of the impugned order of detention in P.D.No.34/2021 dated 24.03.2021 on the file of the second respondent and quash the same as illegal and to direct the respondents to produce the detenue Kumar alias Nallakurumban, aged about 39 years, S/o. Mokka mayan, now detained at the Central Prison, Tiruchirappalli, before this court and set him at liberty.

For Petitioner :Mr.J.Selvam

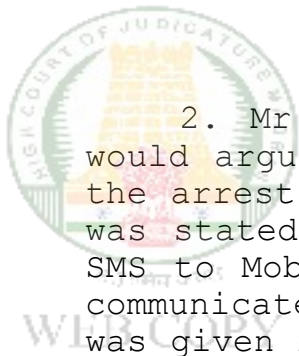
For Respondents :Mr.S.Ravi

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 father of the detenu, namely, Kumar alias Nallakurumban, S/o. Mokka mayan, aged about 39 years, challenging the detention order in P.D.No.34/2021 dated 24.03.2021, passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.



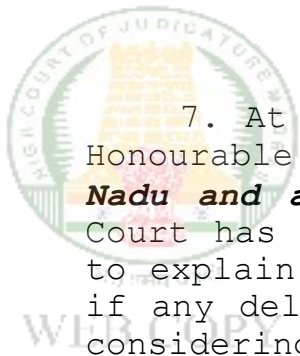
2. Mr.J.Selvam, learned counsel appearing for the petitioner, would argue that the detenu was arrested on 19.02.2021, as per the the arrest memo found at Page No.85 of the booklet. The said arrest was stated to have been intimated to his daughter-in-law Janani by SMS to Mobile No.9788271468. Even though the arrest intimation was communicated to the said Janani, neither the text of the intimation was given nor the signature of the said Janani, who is said to have been informed, was obtained. According to the learned counsel for the petitioner, the copy of the arrest card, report under Section 57 of the NDPS Act, the copy of the order issued by the Government in G.O.(D). No.35, Home, Prohibition and Excise (XVI) Department, dated 11.01.2021 and the copy of the affidavit filed by the Sponsoring Authority before the second respondent requesting to invoke Act 14 against the detenu were not furnished 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 06.05.2021 and it was received on 11.05.2021. Remarks were called for on the same day ie., on 11.05.2021 and it was received on 02.06.2021. The Deputy Secretary dealt with the matter on 02.06.2021. 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 11.05.2021 and 02.06.2021 and in between 02.06.2021 and 26.07.2021, there was a delay of 74 days, after excluding the Government Holidays of 26 days, there was a delay of 48 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 48 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 P.D.No.34/2021 dated 24.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Kumar alias Nallakurumban, S/o. Mokka mayan, aged 39 years, who is now detained at Central Prison, Thiruchirappalli 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-III)

// 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,
Tanjavur District,
Tanjavur.

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

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.

ORDER MADE IN
H.C.P. (MD) No.565 of 2021
27.09.2021

KMV (CO)
GC (25.10.2021) 4P 6C