



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.581 of 2021

B.Sankar @ Sankarganesh

...Petitioner/Detenu

-vs-

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Tanjavur,
Tanjavur District.
3. The Superintendent of Prison,
Central Prison,Tiruchirappalli District ... 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 in pursuant to the proceedings of the second respondent in Detention Order in P.D.No.37/2021 dated 24.03.2021 quash the same and consequently direct the respondents to produce the detenu, namely, Sankar @ Sankarganesh, S/o.Balakrishnan, aged about 34 years, who is now detained in Central Prison, Trichy before this court and set him at liberty.

For Petitioner :Mr.M.Subash Babu

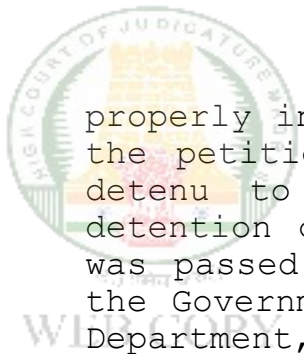
For Respondents :Mr.S.Ravi
Additional Public Prosecutor

O R D E R

(Order of the Court was made by V. BHARATHIDASAN, J.)

This habeas corpus petition has been filed by the detenu, namely, Sankar @ Sankarganesh, S/o.Balakrishnan, aged about 34 years, challenging the detention order in P.D.No.37/2021, 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.M.Subash Babu, learned counsel appearing for the petitioner, would submit that the arrest of the detenu was not



properly intimated to either the family members or the relatives of the petitioner which seriously affected the valuable right of the detenu to make effective representation for revocation of the detention order. He would further submit that the detention order was passed against the detenu on the basis of the G.O., issued by the Government in G.O.(D).No.35, Home, Prohibition and Excise (XVI) Department, dated 11.01.2021. But, the said G.O., was not served to the petitioner. It is the submission of the learned counsel for the petitioner that when no bail petition has been filed by the detenu, the subjective satisfaction reached by the Detaining Authority is without any basis and there is no imminent possibility of the detenu coming out on bail by filing bail petition before the appropriate Court.

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.

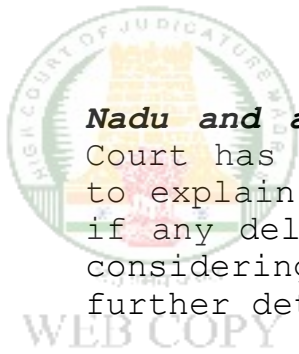
4. Heard the learned counsel appearing on either side and perused the materials available on record.

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 09.04.2021 and it was received on 21.04.2021. Remarks were called for on the same day ie., on 21.04.2021 and it was received on 03.05.2021. The Deputy Secretary dealt with the matter on 04.05.2021. The concerned Minister dealt with the matter on 08.05.2021 and the representation came to be rejected on 07.06.2021. It is seen that in between 21.04.2021 and 03.05.2021, 08.05.2021 and 07.06.2021, there was a delay of 40 days, after excluding the Government Holidays of 18 days, there was a delay of 22 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**

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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 P.D.No.37/2021, dated 24.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, Sankar @ Sankarganesh, S/o.Balakrishnan, aged about 34 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 (CS III)

// 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 Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Tanjavur,
Tanjavur District.



3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort St. George,
Chennai - 600 009.

H.C.P. (MD) No.581 of 2021

DATED : 06.10.2021

MGJ/PM(09.11.2021) 4P 6C