



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.662 of 2021

Sasikala

... Petitioner/Mother of the Detenu

vs.

- 1.The State of Tamilnadu,
Represented by its Secretary to Government,
Home (Prohibition & Excise) Department,
Fort. St. George, Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kanyakumari District at Nagercoil.
- 3.The Superintendent of Prison,
Central Prison,
Palaymkottai,
Tirunelveli 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 relating to the Detention Order passed by the second respondent in P.D.No.09/2021, dated 02.03.2021 and to quash the same and direct the respondents to produce the petitioner's son Shiju @ Shiju Kuttan, S/o.Surendran, who is now confined at Central Prison, Palayamkottai, Tirunelveli District before this Court and set him at liberty.

For Petitioner	:	Mr.M.R.Sreenivasan
For Respondents	:	Mr.A.Thiruvadikumar
		Standing counsel for State

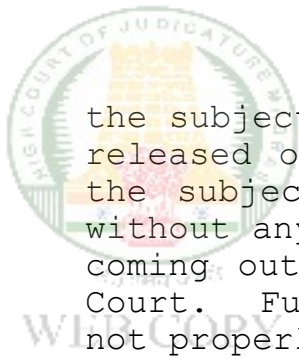
O R D E R

(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, Shiju @ Shiju Kuttan, S/o.Surendran, against the detention order passed by the second respondent in P.D.No.09 of 2021 dated 02.03.2021, branding him as 'Sexual Offender' as contemplated under Section 2(ggg) of the Tamil Nadu Act, 14 of 1982.

2.Mr.M.R.Sreenivasan, learned counsel appearing for the petitioner, would argue that the Detaining Authority, to arrive at

<https://hcservices.courts.gov.in/hcservices/>



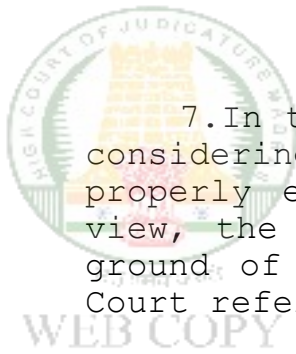
the subjective satisfaction, has stated that the detenu likely to be released on bail in the ground case. He would further submit that the subjective satisfaction reached by the Detaining Authority is without any basis and there is no imminent possibility of the detenu coming out on bail by filing bail petition before the appropriate Court. Further, he 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. 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.

3.Mr.A.Thiruvadikumar, learned Standing counsel appearing for the respondents, 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.In the instant case, the proforma furnished by the learned Standing counsel would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 18.03.2021 and it was received on 22.03.2021. Remarks were called for on 22.03.2021 and it was received on 19.04.2021. The Deputy Secretary dealt with the matter on 19.04.2021. The concerned Minister dealt with the matter on 26.04.2021 and the representation came to be rejected on 27.04.2021. It is seen that in between 22.03.2021 and 19.04.2021, there was a delay of 13 days, after excluding the Government Holidays of 14 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 13 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.

8.In fine, the Habeas Corpus Petition is allowed. The detention order made in Detention Order No.09 of 2021, dated 02.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Shiju @ Shiju Kuttan, S/o.Surendran, aged about 32 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 II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Secretary to Government,
State of Tamil Nadu,
Home (Prohibition & Excise) Department,
Fort. St. George, Secretariat,
Chennai-600 009.
- 2.The Joint Secretary to Government of Tamilnadu,
Public (Law & Order),
Fort Saint George,
Chennai-9.
- 3.The District Collector and District Magistrate,
Kanyakumari District at
Nagercoil.



4.The Superintendent of Prison,
Central Prison,
Palaymkottai,
Tirunelveli District.

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

+1 CC to M/s.M.R.SREENIVASAN, Advocate (SR-28880[F] dated
13/09/2021)

ORDER MADE IN
H.C.P. (MD) No.662 of 2021
13.09.2021

RS (22.09.2021) 4P 7C