



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.822 of 2021

WEB COPY

Gandhi

... Petitioner/Mother of Detenue

-vs-

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

2.The District Collector and District Magistrate,
O/o.the District Collector and District Magistrate,
Tiruchirappalli District.

3.The Superintendent of Prison,
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 connected with the detention order in Cr.M.P.No. 04/2021 dated 12.02.2021 on the file of the second respondent and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Mohanraj aged about 22 years, Son of Sekar, now confined at Central Prison, Tiruchirappalli before this Court and set him at liberty forthwith.

For Petitioner : Mr.K.Navaneetharaja

For Respondents : Mr.S.Ravi

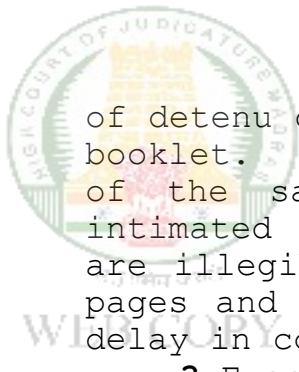
Standing Counsel for Government

O R D E R

(Order of the Court was made by J.NISHA BANU, J.)

This habeas corpus petition has been filed by mother of the detenu, namely, Mohanraj, S/o.Sekar, aged about 22 years, challenging the detention order in Cr.M.P.No.04 of 2021, dated 12.02.2021, passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of the Tamil Nadu Act 14 of 1982.

2.Mr.K.Navaneetharaja, the learned counsel appearing for the petitioner would submit that non-application of mind on the part of the detaining authority in passing the detention order, as the documents relied by the detaining authority as similar case is no way similar to the detenu's case. The 2nd respondent failed to place any evidence in regard to his inference about the possibility



of detenu coming out on bail either in the detention order or in the booklet. 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 booklets are illegible and therefore, the detenu cannot understand the said pages and prefer effective representation. There is an inordinate delay in considering the petitioner's representation.

3. 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. Thus, he would pray to quash the impugned order of detention.

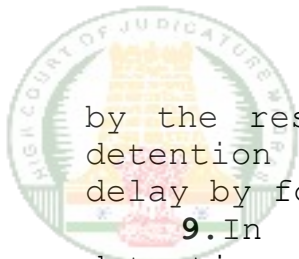
4. The learned Standing Counsel appearing for the respondents would state that after satisfying with the materials placed by the sponsoring authority, the detaining authority has passed the impugned detention order and therefore, there is no infirmity or illegality in the same. He would produce the proforma 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.

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

6. Perusal of the proforma produced by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner has made a representation to the 1st respondent on 30.04.2021 which was received on 04.05.2021. Remarks on the said representation were called for on 04.05.2021 and it was received on 31.05.2021. The Deputy Secretary concerned has dealt with the representation on 31.05.2021 and the Hon'ble Minister concerned has dealt with the representation on 26.07.2021 and finally, the representation came to be rejected on 26.07.2021. It is seen that in between 31.05.2021 and 26.07.2021, there was a delay of 55 days and after excluding 17 Government Holidays, there was a delay of 38 days in considering the petitioner's consideration.

7. At this juncture, it is useful to refer to the decision of the Hon'ble Supreme Court in the case of **Rajammal vs. State of Tamil Nadu and another** reported in **1999 (1) CC 417**, wherein, the Apex Court has held that it is for the authority concerned to explain the delay, if any, in disposal of the representation of the detenu and if any delay was caused on account of any 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 **38** days in considering the representation of the petitioner remains unexplained



by the respondents. Hence, in our considered view, the impugned 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 Cr.M.P.No.04 of 2021, dated 12.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Mohanraj, S/o.Sekar, 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 (AE)

// 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 Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George,
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,
O/o.the District Collector and District Magistrate,
Tiruchirappalli District.
- 4.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.822 of 2021

DATED : 25.08.2021

RS (06.09.2021) 3P 6C

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