



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P.(MD) No.500 of 2020

Petchiammal

... Petitioner

-vs-

1.The Principal Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009

2.The District Collector & District Magistrate
Tirunelveli District, Tirunelveli

3.The Inspector of Police
Manur Circle
Tirunelveli District

4.The Superintendent of Prison
Central Prison
Palayamkottai, Tirunelveli

... 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 pertaining to the impugned detention order passed by the second respondent vide his proceedings in M.H.S.Confdl.No.34/2020, dated 23.06.2020, quash the same and direct the respondents to produce the person or body of the detainee Balamurugan, son of Perumal, aged about 20 years, now confined at Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.A.Jayaramachandran
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

(Order of the Court was made by **K.KALYANASUNDARAM, J.**)

This habeas corpus petition has been filed by the mother of the detenu, namely, Balamurugan, son of Perumal, aged about 20 years, challenging the detention order in M.H.S.Confdl.No.34/2020, dated



23.06.2020, passed by the second respondent, branding him as "Sexual Offender" as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982.

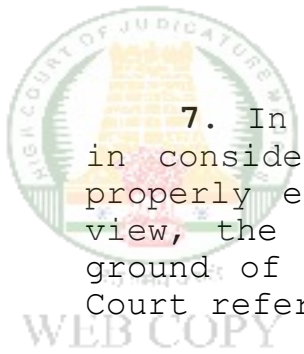
2. Mr.A.Jayaramachandran, learned counsel for the petitioner, would argue that even though the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representation. It is submitted by the learned counsel for the petitioner that the procedural 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.K.Dinesh Babu, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, 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 both sides and perused the materials available on record.

5. 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 10.07.2020 and it was received on 21.07.2020. Remarks were called for on 22.07.2020 and it was received on 14.09.2020. The Deputy Secretary dealt with the matter on 15.09.2020. The concerned Minister dealt with the matter on 17.09.2020 and the representation came to be rejected on the same day i.e.17.09.2020. It is seen that in between 22.07.2020 and 14.09.2020, there was a delay of 39 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 39 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 in M.H.S.Confdl.No.34/2020, dated 23.06.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Balamurugan, son of Perumal, aged about 20 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-III)

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/ /2021

Sub Assistant Registrar

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 Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Collector & District Magistrate,
Tirunelveli District, Tirunelveli.
- 3.The Inspector of Police,
Manur Circle, Tirunelveli District.
- 4.The Superintendent of Prison,
Central Prison, Palayamkottai, Tirunelveli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
6. The Joint Secretary to Government,
Public (Law and Order), Secretariat, Chennai-600 009.

H.C.P. (MD) No.500 of 2020
03.03.2021

KRK

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