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H.C.P. (MD) No.736 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
H.C.P. (MD) No.736 of 2021

D.Eswari

... Petitioner

-vs-

1.State of Tamil Nadu,
rep. by The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department
Secretariat,
Chennai-600 009

2.The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.

3.The Superintendent,
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 in detention order passed in C.O.C.No.11/2021 dated 04.05.2021 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Deventhiran, S/o.Mahalingam, male, aged 56 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.S.Ravi

Additional Public Prosecutor

O R D E R

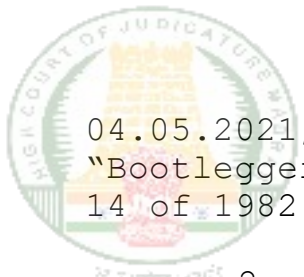
S.VAIDYANATHAN, J.

and

DR.G.JAYACHANDRAN, J.

This habeas corpus petition has been filed by the wife of the detenu, namely, Deventhiran, son of Mahalingam, aged 56 years, challenging the detention order in C.O.C.No.11/2021, dated

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



04.05.2021, passed by the second respondent, branding him as "Bootlegger" as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982.

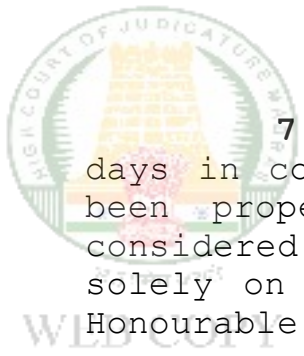
2. In the ground case, for possessing 110 liters of Pondy poisonous arrack, the detenu was remanded on 11.03.2021 and later, detention order was passed on 04.05.2021. The detention order is under challenge in this writ petition on the ground that there was an inordinate and unexplained delay in considering the representation. In addition, the ground case as well as the adverse case are foisted against the detenu just to harass him.

3. Mr.S.Ravi, learned Additional Public Prosecutor, 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 detention order. 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.

4. Heard both sides and perused the materials available on record.

5. Perusal of the proforma furnished by the learned Additional Public Prosecutor appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent on 10.05.2021 and it was received on 13.05.2021. Remarks were called for on the same day i.e.13.05.2021 and it was received on 14.06.2021. The Deputy Secretary dealt with the matter on 15.06.2021. The concerned Minister dealt with the matter on 15.07.2021 and the representation came to be rejected on the same day i.e.15.07.2021. It is seen that in between 15.06.2021 and 15.07.2021, there was a delay of 29 days, after excluding the Government Holidays of 8 days, there was a delay of 21 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 21 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 C.O.C.No.11/2021, dated 04.05.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Deventhiran, son of Mahalingam, aged 56 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 (Crl side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

am

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
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai 600 009.



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

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RK(30/12/2021) 4P 6C