



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2021

CORAM:

**THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

H.C.P. (MD)No.775 of 2021

Shanmugam ... Petitioner

vs.

State represented by

1.The District collector and
District Magistrate,
Pudukkottai District.

2.The Additional Chief Secretary of Government,
Home, Prohibition and Exercise Department,
Fort St,George,
Chennai-9.

3.The Superintendent of Prison,
Central prison,
Trichy,
Trichy District.

... Respondents

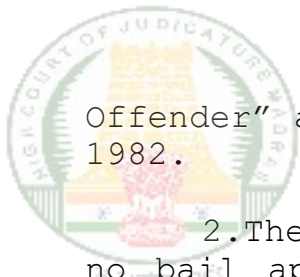
PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the records from the first respondent in P.D.O.No.06/2021 dated, 13.02.2021, by setting aside the said order of detention passed by the first respondent and setting the detenu Kosu @ Naveen, S/o.Shanmugam, at liberty now detained in the Central Prison, Trichy.

For Petitioner : Mr.G.Mathavan
For Respondents : Mr.S. Ravi
Additional Public Prosecutor

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 father of the detenu, namely Kosu @ Naveen, S/o.Shanmugam, aged about 21 years, challenging the detention order in P.D.O.No.06/2021, dated 13.02.2021, passed by the second respondent, branding him as "Drug



Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

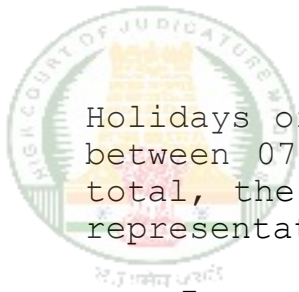
2.The learned counsel for the petitioner would state that when no bail application is pending in the remanded case, there is no imminent possibility of release on bail, but the detaining authority came to the subjective satisfaction relying a bail granted to some other person. The arrest was not properly intimated to the relatives or friends of the detenu. There are four more accused added in the ground case without passing any detention order against the other accused person, the detaining authority purposefully passed the detention order against the detenu alone, which itself clearly shows the detention order passed on partial manner and biased manner and hence, it is liable to be set aside. There is an inordinate delay in considering the petitioner's representation.

3.The 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 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.

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

5.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.

6.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 dated 13.05.2021 and it was received on 19.05.2021. Remarks were called for on 19.05.2021 and it was received on 07.06.2021. The Deputy Secretary dealt with the matter on 07.06.2021. The concerned Minister dealt with the matter on 10.06.2021 and the representation came to be rejected on 27.07.2021. It is seen that in between 19.05.2021 and 07.06.2021, there was a delay of 18 days, after excluding the Government



Holidays of 9 days, there was a delay of 9 in the first part and in between 07.06.2021 and 10.06.2021, there was a delay of 2 days, in total, there was a delay of 11 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 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 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 11 days in considering the representation of the petitioner remains unexplained 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 above decision of the Apex Court.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in P.D.O.No.06/2021, dated 13.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Kosu @ Naveen, S/o.Shanmugam, aged about 21 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 (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mpk

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 District collector and
District Magistrate,
Pudukkottai District.



2.The Additional Chief Secretary of Government,
Home, Prohibition and Exercise Department,
Fort St,George,
Chennai-9.

3.The Superintendent of Prison,
Central prison,
Trichy,
Trichy District.

4. The Joint Secretary to Government,
Public (Law &Order) Fort St.Goerge, Chennai 600 009

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

H.C.P. (MD) No.775 of 2021
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KS (CO)
KB(12.10.2021) 4P 6C