



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P. (MD) No.750 of 2020

M.Kavitha

... Petitioner

-vs-

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

2.The District Collector and District Magistrate
Thoothukudi District, Thoothukudi

3.The Inspector of Police
North Police Station
Thoothukudi
Thoothukudi District

4.The Superintendent
Central Prison
Palayamkottai, Tirunelveli

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records pertaining to the detention order passed by the second respondent in H.S.(M).Confdl.No.66/2020, dated 02.09.2020 and quash the same and consequently set the detenu by name Maharajan, son of Soundarapandian, (Male aged 36 years) (TPDA No.6226), who is confined at Central Prison, Palayamkottai, Tirunelveli at liberty.

For Petitioner : Mr.R.Anand

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 wife of the detenu, namely, Maharajan, son of Soundarapandian, aged about 36 years, against the detention order passed by the second respondent, in H.S.(M).Confdl.No.66/2020, dated 02.09.2020, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act, 14 of 1982.



2. Though several grounds have been raised challenging the impugned detention order, Mr.R.Anand, learned counsel for the petitioner, mainly concentrated on two grounds. Firstly, he would state that there is enormous delay in considering the petitioner's representation, which would vitiate the impugned order of detention as per Articles 21 and 22 of the Constitution of India. Secondly, it is submitted that while arriving at the subjective satisfaction, the Detaining Authority has mentioned that the detenu is an active rowdy and cases are pending against him since 2018 and he is under the surveillance of Thoothukudi SIPCOT Police. According to the learned counsel, there is no material to arrive at the subjective satisfaction, which shows lack of application of mind on the part of the Detaining Authority, while passing the impugned order of detention.

3. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, contended that the detenu in this case is having previous cases and in the ground case, he was found in possession of 2,09,536 packets of gutka under the brand Ganesh Tobacco Products. Only after satisfying with the materials furnished by the Sponsoring Authority and in order to prevent the detenu from indulging in similar activities in future, which are prejudicial to the maintenance of public order, the impugned detention order has been passed by the Detaining Authority and there is no illegality or irregularity in the impugned order of detention warranting interference of this Court.

4. We have heard the rival submissions and perused the materials placed on record.

5. In the case on hand, a perusal of the impugned detention order shows that the Detaining Authority, while reaching the subjective satisfaction, has stated that the detenu is an active rowdy and cases have been registered against him since 2018 and he is under the surveillance of Thoothukudi SIPCOT Police. But, at Page No.169 of the booklet, the Sponsoring Authority has stated that no criminal cases have been registered against the detenu, which shows non-application of mind on the part of the Detaining Authority while passing the impugned order of detention.

6. Further, it is seen from the proforma furnished by the learned Additional Public Prosecutor that the representation of the petitioner, dated 05.09.2020, was received on 25.09.2020. Remarks were called for on the same day i.e.25.09.2020 and it was received on 30.09.2020. The Deputy Secretary dealt with the matter on the same day i.e.30.09.2020. The concerned Minister dealt with the matter on 04.11.2020 and the representation came to be rejected on 06.11.2020. It is seen that in between 30.09.2020 and 04.11.2020,



there was a delay of 27 days, after excluding the Government Holidays of seven 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 nay 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 27 days has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the grounds as stated above by following the decision of the Honourable Apex Court referred supra.

9. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in H.S.(M). Confdl.No.66/2020, dated 02.09.2020, is set aside. Consequently, the detenu, namely, Maharajan, son of Soundarapandian, aged about 36 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 (CO)

// 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 / litigat concerned.

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To:

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



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

3. The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.

4. The Inspector of Police,
North Police Station,
Thoothukudi,
Thoothukudi District.

5. The Superintendent,
Central Prison,
Palayamkottai, Tirunelveli.

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

H.C.P. (MD) No.750 of 2020
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TP (CO)
KB (02.03.2021) 4P 7C