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H.C.P.(MD) No.767 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P. (MD) No.767 of 2020

M.Esakki

... Petitioner/
Brother of the Detenu
-vs-

1.State of Tamil Nadu

Rep.by the Principal Secretary to Government
Home, Prohibition and Excise Department
Fort. St.George, Chennai-600 009

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

3.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 entire records connected with the detention order passed in M.H.S.Confdl.No.61/2020, dated 08.09.2020, on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's brother i.e., Sudalaikkan, aged about 28 years, son of Murugan, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

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 brother of the detenu, namely, Sudalaikkan, son of Murugan, aged about 28 years, challenging the detention order in M.H.S.Confdl.No.61/2020, dated 08.09.2020, passed by the second respondent, branding him as "Sand Offender" as contemplated under Section 2(gg) of Tamil Nadu

Act 14 of 1982

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



2. Mr.N.Pragalathan, 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.

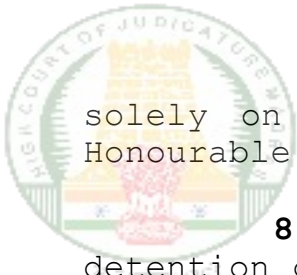
3. Mr.K.Dinesh Babu, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or 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 21.09.2020 and it was received on 29.09.2020. Remarks were called for on 29.09.2020 and it was received on 02.12.2020. The Deputy Secretary dealt with the matter on the same day i.e.02.12.2020. The concerned Minister dealt with the matter on 09.01.2021 and the representation came to be rejected on 11.01.2021. It is seen that in between 02.12.2020 and 09.01.2021, there was a delay of 29 days, after excluding the Government Holidays of eight 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 29 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.61/2020, dated 08.09.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Sudalaikkan, son of Murugan, aged about 28 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 (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.

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To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort. St.George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



5.The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai-9.

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