



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.1093 of 2020

N.Kumar

... Petitioner/Brother of the Detenu

-vs-

- 1.The State of Tamil Nadu,
represented by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Chennai-9.
 - 2.The District Collector/District Magistrate,
Sivagangai District,
Sivagangai.
 - 3.The Superintendent,
Central Prison,
Madurai.
- ... 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 proceedings of the second respondent made in his proceedings in Cr.M.P.No.16/D.O/2020, dated 16.09.2020 and to quash the same and set the Petitioner's brother by name 'Kuppaikannan @ Rajeshkannan, son of Nallan, aged about 32 years' at liberty from the third respondent.

For Petitioner : Mr.C.Karthikeya

For Respondents : Mr.S.Ravi,
Standing Counsel for the State

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 detenu, namely, Kuppaikannan @ Rajeshkannan, son of Nallan, aged about 32 years, challenging the detention order in Cr.M.P.No.16/D.O/2020, dated 16.9.2020, passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.



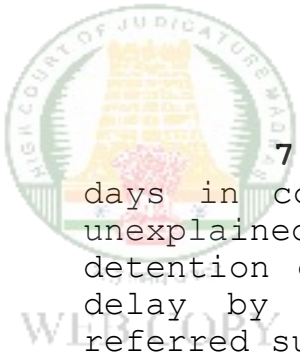
2. Mr.C.Karthikeya, learned counsel for the petitioner, would argue that even though the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representation. It is submitted by the learned counsel for the petitioner that the procedural 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.S.Ravi, learned Standing Counsel for the State appearing for the respondents, while reiterating the counter affidavit filed by the second respondent would vehemently oppose the Habeas Corpus Petition contending that the detenus in these cases are involved in offences of serious nature like murder and other grave offences. He further 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 pro-forma 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 dated Nil and it was received on 29.09.2020. Remarks were called for on the same day i.e. 29.09.2020 and it was received on 08.10.2020. The Deputy Secretary dealt with the matter on 08.10.2020. The concerned Minister dealt with the matter on 4.11.2020 and the representation came to be rejected on 6.11.2020. It is seen that in between 8.10.2020 and 4.11.2020, there was a delay of 26 days, after excluding the Government Holidays of 6 days, there was a delay of 20 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 20 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 decision of the Honourable Apex Court referred supra.

8. In fine, the Habeas Corpus Petition is allowed. The detention order in , Cr.M.P.No.16/D.O/2020, dated 16.9.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Kuppaikannan @ Rajeshkannan, son of Nallan, aged about 32 years, who is now detained at Central Prison, Vellore 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)

vsn

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,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai-9.
- 2.The District Collector/District Magistrate,
Sivagangai District,
Sivagangai.
- 3.The Superintendent,
Central Prison,
Madurai.



4. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai

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

ORDER MADE IN
H.C.P. (MD) No.1093 of 2020
05.07.2021

pm (CO)
TR(14.07.2021) 4P 6C