



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGOVA
H.C.P. (MD) No.1027 of 2020

Jayalakshmi, W/o.Arumugam

... Petitioner

-vs-

1.The Additional Chief Secretary to the 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.

...

Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records pertaining to the impugned detention order passed by the second respondent in his proceedings in M.H.S.Confdl.No.86/2020, dated 22.10.2020, detaining the detenu under Section 2(ggg) of the Tamil Nadu Act 14 of 1982 as a Sexual Offender, quash the same and direct the respondents to produce the detenu, viz., Esakkimuthu, S/o.Arumugam, Male, aged about 21 years, who is detained in Central Prison, Palayamkottai, before this Court and set him at liberty.

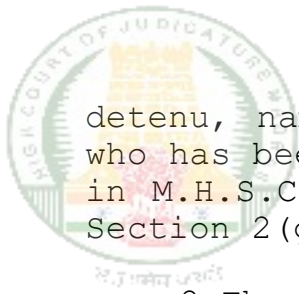
For Petitioner: Mr.D.S.Haroon Rasheed

For Respondents : Mr.S.Ravi
Standing Counsel for Tamil Nadu Government

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

This Habeas Corpus Petition has been filed by the mother of the
<https://hcservices.ecourts.gov.in/hcservices/>



detenu, namely, Esakkimuthu, son of Arumugam, aged about 21 years, who has been branded as ''Sexual Offender'' by the second respondent in M.H.S.Confdl.No.86/2020, dated 22.10.2020, as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982.

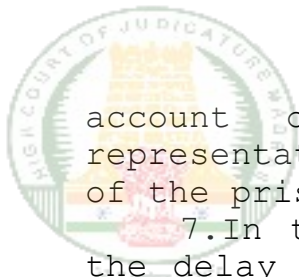
2.Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 22.10.2020, Mr.D.S.Haroon Rasheed, learned counsel appearing for the petitioner would contend that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India has been violated and there is an inordinate and unexplained delay in considering the representation made by the petitioner on behalf of the detenu and on this sole ground, the detention order is liable to be set aside.

3.Per contra, Mr.S.Ravi, learned Standing Counsel appearing for the State would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the order of detention passed by the second respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

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

5.In the instant case, it is not in dispute that the detenu was detained by the order of the second respondent, dated 22.10.2020. Aggrieved over the same, a representation dated 07.11.2020 has been sent to the first respondent and the same was received on 12.11.2020 and on the same day, remarks were called for and remarks were received on 18.12.2020. The Deputy Secretary dealt with the matter on 18.12.2020. The concerned Minister dealt with the matter on 09.01.2021 and thereafter, the detenu's representation was rejected on 12.01.2021. It is seen that there was delay of 21 days between 18.12.2020 and 09.01.2021. It is also seen that there are 6 Government holidays and after excluding the same, there is a delay of 15 days in considering the representation made by the petitioner on behalf of the detenu.

6.In the case of **Rajammal vs. State of Tamil Nadu and another (1999 (1) SCC 417)** the Honourable Apex Court 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.

7.In the case on hand, there is absolutely no explanation for the delay of 15 days in considering the representation made by the petitioner on behalf of the detenu. 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 order of detention passed by the second respondent, in M.H.S.Confdl.No.86/2020, dated 22.10.2020, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Esakkimuthu, son of Arumugam, aged about 21 years, 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 (CSI)

// 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 Additional Chief Secretary to the 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.

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



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

5.The joint secretary of Government,
Public (law&order),
Fort st.George,
chennai-9.

H.C.P. (MD) No.1027 of 2020

09.06.2021

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