



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P. (MD) No.1106 of 2020

R.Gomathi

... Petitioner

-vs-

- 1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Inspector of Police,
Kallidaikurichi Police Station,
Tirunelveli 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 2nd respondent in M.H.S. Confdl.No.102/2020 dated 17.11.2020 and quash the same and consequently, set the detinue by name R.Ramesh Kumar, S/o Ramasamy (Male aged 42 years) (TPDA No.6350) 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.]

The Habeas Corpus Petition has been filed by the wife of the detenu, namely, R.Ramesh Kumar, son of Ramasamy, Male aged about 42 years, who has been branded as "Sand Offender" by the second respondent in Detention Order in M.H.S.Confdl.No.102/2020 dated 17.11.2020, as contemplated under Section 2(gg) of the Tamil Nadu Act 14 of 1982.

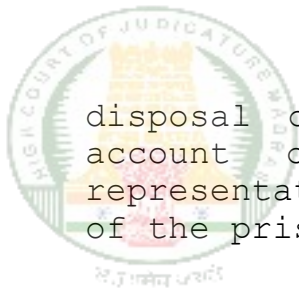
2.Mr.R.Anand, learned counsel for the petitioner would argue that the impugned detention order is liable to be set aside on two grounds. Firstly, there is a delay in disposal of the representation and secondly, it is contended that the similar case details relied on by the detaining authority to arrive at subjective satisfaction, is not similar to the case of the detenu.

3.Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents 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 records.

5.In the instant case, it is not in dispute that the detenu was detained by the order of the second respondent dated 17.11.2020. Aggrieved over the same, a representation dated 21.11.2020 has been sent to the first respondent and the same was received on 18.12.2020 and on the same day, remarks were called for, but, the same were received only on 29.12.2020. The Deputy Secretary dealt with the matter on 30.12.2020. 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 9 days between 30.12.2020 and 09.01.2021. It is also seen that there are 3 Government holidays and after excluding the same, there is a delay of 6 days in considering the representation 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 nay 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 6 days in considering the representation of the detenu. Hence, in our considered view, the detention order is liable to be set aside on the ground of delay by following the decision of the Honourable Apex Court referred supra.

8. Further, according to the learned counsel, the accused in Crime No.254 of 2020 on the file of the Inspector of Police, Thisayanvilai was involved in possession of ½ unit of sand, whereas, the allegation against the detenu is that he is quarrying 11,140 unit of sand. So, we find force in the submission of the learned counsel for the petitioner.

9. In fine, the order of detention passed by the third respondent, in M.H.S.Confdl.No.102/2020 dated 17.11.2020, is set aside and the habeas corpus petition is allowed. Consequently, the detenu, namely, R.Rameshkumar, about 42 years, son of Ramasamy, who is 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 ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skn

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 Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

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



2.The District Collector and District Magistrate,
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Tirunelveli.

3.The Inspector of Police,
Kallidaikurichi Police Station,
Tirunelveli District.

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

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

6.The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai-9

H.C.P. (MD) No.1106 of 2020
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VB (05.03.2021) 4P 7C