



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

H.C.P. (MD) No.1152 of 2020

Mariamammal

... Petitioner/Wife of the detenu

-vs-

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

2.The District Collector,
The Office of the District Magistrate and District Collector,
Dindigul District,
Dindigul.

3.The Inspector of Police,
All Women Police Station,
Palani,
Dindigul District.

4.The Superintendent of Prison,
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 directing the respondents to produce the body of detenu namely, P.Kalimuthu, S/o.Palanisamy, aged about 36 years before this Court, who is now detained in the Central Prison, Madurai in pursuant to the detention order passed by the 2nd respondent in Detention Order No.52/2020, dated 28.08.2020 to call for the records and quash the same and release the detenu at liberty forthwith.

For Petitioner: Mr.A.D.Ganeshamoorthi

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, Kalimuthu, son of Palanisamy, aged about 36 years, challenging the detention order No.52/2020, dated 28.08.2020,



passed by the second respondent, branding him as "Sexual Offender" as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982.

2. It is represented, by the learned counsel for the petitioner Mr.A.D.Ganeshamoorthi, that the detenu has been in judicial custody for more than 7 months and the police has filed a final report against the detenu and the same was taken on file by the Mahila Court, Dindigul in Spl.S.C.No.63 of 2021. 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, on instructions, 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 11.09.2020 and it was received on 15.09.2020. Remarks were called for on 15.09.2020 and it was received on 25.09.2020. The Deputy Secretary dealt with the matter on 26.09.2020. 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 26.09.2020 and 04.11.2020, there was a delay of 38 days, after excluding the Government Holidays of 8 days, there was a delay of 30 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 30 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.

WEB COPY 8. In fine, the Habeas Corpus Petition is allowed. The detention order No.52/2020, dated 28.08.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Kalimuthu, son of Palanisamy, aged about 36 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Am

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,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector,
The Office of the District Magistrate and District Collector,
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- 3.The Inspector of Police,
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Palani,
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- 4.The Superintendent of Prison,
Central Prison,
Madurai.



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

+1 CC to M/s.A.D.GANESHA MOORTHY, Advocate (SR-11044[F] dated
15/03/2021)

H.C.P. (MD) No.1152 of 2020
15.03.2021

SSS (CO)
KK(31.03.2021) 4P 7C