



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD)No.1087 of 2020

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Amsu

... Petitioner/Mother of the Detenu

Vs.

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Theni District, Theni.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District. ... 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 of the respondent no.2 in Detention Order No.66/2020, dated 05.11.2020 and quash the same and direct the Respondents to produce the body or person of the detenu by name Ulaganathan, son of Alagarsamy, aged about 34 years, now detained as 'Sexual Offender' at Madurai Central Prison, before this Court and set him at liberty forthwith.

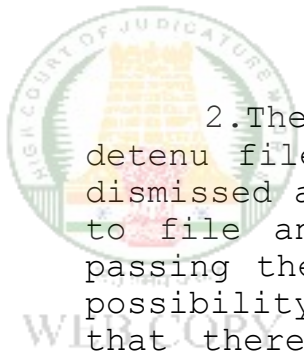
For Petitioner : Mr.R.Alagumani

For Respondents : Mr.S. Ravi
Additional Public Prosecutor

O R D E R

(Order of the Court was made by J.NISHA BANU, J.)

This habeas corpus petition has been filed by the wife of the detenu, namely, Ulaganathan, S/o. Alagarsamy, aged about 34 years, challenging the Detention Order No.66 of 2020, dated 05.11.2020, passed by the second respondent, branding him as "Sexual Offender" as contemplated under the Tamil Nadu Act 14 of 1982.



2.The learned counsel for the petitioner would state that the detenu filed bail application in the ground case and the same was dismissed and thereafter the detenu did not file or made any attempt to file any bail application in the ground case at the time of passing the detention order, as such, there is no imminent or real possibility of coming out on bail by the detenu, whereas, stating that there is a real possibility of coming out on bail by the detenu, the impugned detention order has been passed, which reflects non-application of mind on the part of the detaining authority. The documents in support of the order of detention are considered on the basis of 'pick and choose' policy. The Tamil and English version of the grounds of detention and booklet differs and therefore, the detenu was not able to effectively represent the case before the advisory board and there is an inordinate delay in considering the petitioner's representation.

3.The learned Additional Public Prosecutor appearing for the respondents would state that after satisfying with the materials placed by the sponsoring authority, the detaining authority has passed the impugned detention order and therefore, there is no infirmity or illegality in the same. He would produce the proforma regarding the disposal of the petitioner's representation and would state that even if there is any delay in disposal of the petitioner's representation, it has not caused any prejudice to the rights of the detenu. Thus, he would pray for dismissal of this petition.

4.Heard the learned counsel for the petitioner as well as the respondents.

5.Even though the petitioner has raised the above grounds to quash the impugned detention order, the learned counsel for the petitioner would mainly place arguments on the ground of delay in disposal of the petitioner's representation. In this regard, the learned counsel for the petitioner would state 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.

6.Perusal of the proforma furnished by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent dated 26.11.2020 and it was received on 01.12.2020. Remarks were called for on 01.12.2020 and it was received on 15.12.2020. The Deputy Secretary dealt with the matter on 15.12.2020. The concerned Minister dealt with the matter on 09.01.2021 and the representation came to be rejected on 12.01.2021. It is seen that in between 01.12.2020 and 15.12.2020, there was a delay of 9 days, after excluding the Government Holidays of 4 days,



there was a delay of 9 days in the first part and in between 15.12.2020 and 09.01.2021, there was a delay of 24 days, after excluding the Government Holidays of 5 days, there was a delay of 19 days in the second part and totally there was a delay of 28 days in considering the petitioner's representation.

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7. 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.

8. In the case on hand, as stated supra, the delay of 28 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 above decision of the Apex Court.

9. In fine, the Habeas Corpus Petition is allowed. The Detention Order No.66 of 2020, dated 05.11.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Ulaganathan, S/o.Alagarsamy, aged about 34, 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 I)

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/ /2021

Sub Assistant Registrar(CS)

mpk

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,
State of Tamil Nadu,
Home Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

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



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

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

4.The Joint Secretary to Government,
Public(Law & Order),
Fort St. George,
Chennai - 600 009.

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

H.C.P. (MD)No.1087 of 2020

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MGJ(20.10.2021) 4P 6C