



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :24.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.1195 of 2020

Rajaraman

... Petitioner/Detenu

-vs-

1. State of Tamil Nadu,
Represented by
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... 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 passed in H.S. (M) Confdl No.103/2020 dated 04.11.2020 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Rajaraman, aged about 27 years, S/o.Annadurai, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner :Mr.N.Pragalathan

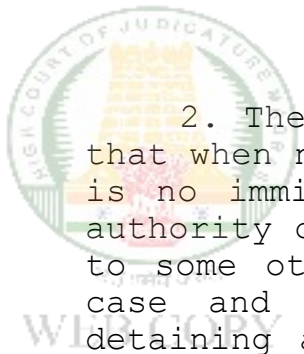
For Respondents :Mr.S.Ravi

Standing counsel for Government

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 detenu, namely, Rajaraman, S/o.Annadurai, aged about 27 years, challenging the detention order in H.S.(M) Confdl No.103/2020 dated 04.11.2020, passed by the second respondent, branding him as "Sexual Offender" as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982.



2. The learned counsel appearing for the petitioner would state that when no bail application is pending in the remanded case, there is no imminent possibility of release on bail, but the detaining authority came to the subjective satisfaction relying a bail granted to some other person. The entire documents relating to the ground case and adverse cases were not supplied to the detenu. The detaining authority pre-judged the future activities of the detenu that if he comes out on bail, the detenu will indulge in such future activities, which will be prejudicial to the maintenance of public order, but there is no corresponding cogent materials in the booklet relating to the said statement in the booklet. Further, several pages in the booklet are in English and therefore, the detenu was not able to understand and make effective representation and there is an inordinate delay in passing the detention order.

3. 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. Thus, he would pray to quash the impugned order of detention.

4. The learned Standing Counsel 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.

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

6. Perusal of the proforma produced by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner has made a representation to the 1st respondent on 12.12.2020 which was received on 17.12.2020. Remarks on the said representation were called for on 17.12.2020 and it was received on 28.12.2020. The Deputy Secretary concerned has dealt with the representation on 28.12.2020 and the Hon'ble Minister concerned has dealt with the representation on 09.01.2021 and finally, the representation came to be rejected on 11.01.2021. It is seen that in between 17.12.2020 and 28.12.2020, there was a delay of 10 days and after excluding 3 Government Holidays, there was a delay of 7 days in the first part and in between 28.12.2020 and



09.01.2021, there was a delay of 11 days and after excluding 3 Government holidays, there was a delay of 8 days in the second part, in total, there was a delay of 15 days in considering the petitioner's consideration.

7. At this juncture, it is useful to refer to the decision of the Hon'ble Supreme Court in the case of **Rajammal vs. State of Tamil Nadu and another** reported in **1999 (1) CC 417**, wherein, the Apex Court has held that it is for the authority concerned to explain the delay, if any, in disposal of the representation of the detenu 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.

8. In the case on hand, as stated supra, the delay of 15 days in considering the representation of the petitioner remains unexplained by the respondents. Hence, in our considered view, the impugned 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 in H.S.(M) Confdl No.103 of 2020, dated 04.11.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Rajaraman, S/o. Annadurai, aged about 27 years, who is 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 (CS-III)

// True Copy //

/ /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 Tamilnadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

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



2. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort. St.George,
Chennai-9
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P.(MD) No.1195 of 2020

DATED : 24.08.2021

GC(06.09.2021) 4P 6C