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H.C.P(MD) No.1542 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

H.C.P. (MD) No.1542 of 2021

G.Naveenkumar

... Petitioner

-vs-

- 1.The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
State of Tamil Nadu, Secretariat
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.16/2021, dated 04.03.2021 and quash the same as illegal and direct the respondents to produce the body or person of the detenu by name G.Naveenkumar, son of Gunasekaran, aged 35 years, now detained in Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.Sabeer Mohamed.I.
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

O R D E R

S.VAIDYANATHAN, J.

and

DR.G.JAYACHANDRAN, J.

This habeas corpus petition has been filed by the detenu, namely, G.Naveenkumar, son of Gunasekaran, aged 35 years, challenging the detention order No.16/2021, dated 04.03.2021, passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982.

2. Even though the petitioner has raised several grounds to quash the impugned detention order, the learned counsel for the

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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.

3. Mr.A.Thiruvadi Kumar, 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 detention order. 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. Further, he would submit that final report in the ground case has already been filed and it has been taken on file by the Special Court. Thus, he would pray for dismissal of this petition.

4. Heard both sides and perused the materials available on record.

5. Perusal of the proforma furnished by the learned Additional Public Prosecutor appearing for the respondents would show that as against the impugned detention order, the petitioner made a representation to the first respondent on 16.03.2021 and it was received on 22.03.2021. Remarks were called for on the same day i.e.22.03.2021 and it was received on 11.05.2021. The Deputy Secretary dealt with the matter on 18.05.2021. The concerned Minister dealt with the matter on 26.07.2021 and the representation came to be rejected on the same day i.e. 26.07.2021. It is seen that in between 18.05.2021 and 26.07.2021, there was a delay of 47 days, after excluding the Government Holidays of 21 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 47 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.

8. In fine, the Habeas Corpus Petition is allowed. The detention order No.16/2021, dated 04.03.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, G.Naveenkumar, son of Gunasekaran, aged 35 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-III)

// 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 Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu, Secretariat,
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.
4. The Joint Secretary to Government,
Public (Law & Order) Fort St.Goerge, Chennai 600 009
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.1542 of 2021
12.11.2021

MMS (CO)

KB(23.11.2021) 3P 6C

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