



WEB COPY

H.C.P(MD)No.1209 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :20.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.1209 of 2020

Periyasamy

... Petitioner/father of the detenue

-vs-

1. The Additional Chief Secretary to Government,
Home, Prohibition and Exercise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Madurai District,
Madurai.
3. The Superintendent,
Central Prison,
Madurai.
4. The Inspector of Police,
All Women Police Station,
Melur Taluk,
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 records relating to the Detention Order passed by the second respondent in his proceedings in B.C.D.F.G.I.S.S.V.No.23/2020 dated 08.10.2020 and to quash the same and direct the respondents to produce the body or person of the detenue namely, Sivapalan @ Jeyapal, aged about 30 years, before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : Mr.R.Murugan

For Respondents : Mr.S.Ravi
Additional Public Prosecutor



O R D E R

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

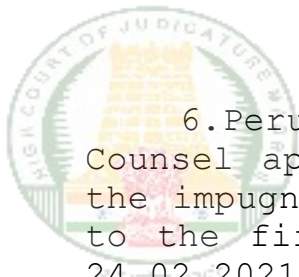
This habeas corpus petition has been filed by the father of the detenu, namely, Sivapalan @ Jeyapal, aged about 30 years, challenging the detention order in B.C.D.F.G.I.S.S.S.V.No.23/2020 dated 08.10.2020, passed by the second respondent, branding him as "Sexual Offender" as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982.

2.The learned counsel appearing for the petitioner would state that in para 5 of the grounds of detention it has been mentioned that there is a compelling necessity, the order of detention has been passed. However, no such compelling necessity had arisen to pass an order of prevention detention, since he was arrested on 30.07.2020, in the ground case and the impugned detention order has been passed on 08.10.2020, after a lapse of 70 days. The intimation of the detention order to the father of the detenu on 08.10.2020, wherein it has been mentioned that the detenu is lodged in District Jail at Theni from 09.10.2020, which is clear non application of mind of the detaining authority. But, actually the detenu was lodged at Central Prison, Madurai, which adversely affects the right of the detenu to make effective representation. Some of the pages in the booklets are illegible and therefore, the detenu cannot understand the said pages and prefer effective representation and there is an inordinate delay in considering the petitioner's representation.

3.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.

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 22.02.2021 and it was received on 24.02.2021. Remarks were called for on 24.02.2021 and it was received on 26.03.2021. The Deputy Secretary dealt with the matter on 26.03.2021. The concerned Minister dealt with the matter on 12.04.2021 and the representation came to be rejected on 15.04.2021. It is seen that in between 24.02.2021 and 26.03.2021, there was a delay of 29 days, after excluding the Government Holidays of 8 days, there was a delay of 21 days in the first part and in between 26.03.2021 and 12.04.2021, there was a delay of 16 days, after excluding the Government Holidays of 8 days, there was a delay of 8 days in the second Part and totally, there was a delay of 29 days in considering the petitioner's representation.

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 29 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 in B.C.D.F.G.I.S.S.S.V.No.23/2020 dated 08.10.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Sivapalan @ Jeyapal, aged about 30 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 ()

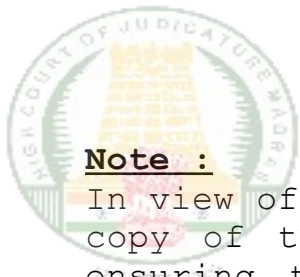
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/ /2021

Sub Assistant Registrar (CS)

mpk

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



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 Exercise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Madurai District,
Madurai.
3. The Superintendent,
Central Prison,
Madurai.
4. The Inspector of Police,
All Women Police Station,
Melur Taluk,
Madurai District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

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

+1 CC to M/s.R.MURUGAN, Advocate (SR-29691[F] dated 21/09/2021)

H.C.P. (MD) No.1209 of 2020
20.09.2021

RK (18/10/2021) 4P 8C