



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
H.C.P.(MD) No.1221 of 2020

Kali @ Kaliraja

... Petitioner/ Detenu

vs.

1. State of Tamil Nadu
Represented by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai-600 009.

2.The District Collector and District Magistrate,
Theni,
Theni District.

3.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, calling for the entire records connected with the detention order passed in Detention Order No.61 of 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 Kali @ Kaliraja, aged about 48 years, S/o.Mayandithevar, now detained at Central Prison, Madurai before this Hon'ble Court and set him at liberty forthwith.

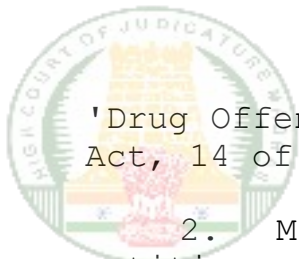
For Petitioner : Mr.N.Pragalathan

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, Kali @ Kaliraja, S/o.Mayandithevar, aged about 48 years, against the detention order passed by the second respondent, in Detention Order No.61 of 2020 dated 04.11.2020, branding him as



'Drug Offender' as contemplated under Section 2(e) of the Tamil Nadu Act, 14 of 1982.

2. Mr.N.Pragalathan, learned counsel appearing for the petitioner, would argue that the detenu has not filed any bail petition in the remanded case. However, the Detaining Authority, to arrive at the subjective satisfaction, has stated that in a similar case, bail was granted to some other person. It is the submission of the learned counsel that when no bail petition has been filed by the detenu in the remanded case, the subjective satisfaction reached by the Detaining Authority is without any basis and there is no imminent possibility of the detenu coming out on bail by filing bail petition before the appropriate Court. Further, the arrest of the detenu was not properly intimated to either the family members or the relatives of the petitioner which seriously affected the valuable right of the detenu to make effective representation for revocation of the detention order. In addition to that, the Detaining Authority has passed the detention order by relying upon an order issued by the Government. But the said Government Order has not been supplied to the detenu. Even though the learned counsel for the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representation. 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.S.Ravi, learned Standing counsel appearing for the respondents, 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 the learned counsel appearing on either side and perused the materials available on record.

5. In the instant case, the proforma furnished by the learned Standing counsel would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 25.11.2020 and it was received on 11.12.2020. Remarks were called for on the same day i.e., on 11.12.2020 and it was received on 22.12.2020. The Deputy Secretary dealt with the matter on 22.12.2020. The concerned Minister dealt with the matter on 09.01.2021 and the representation came to be rejected on 11.01.2021. It is seen that in between 11.12.2020 and 22.12.2020 and in between



22.12.2020 and 09.01.2021, there was a delay of 13 days, after excluding the Government Holidays of 4 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 13 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 made in Detention Order No.61 of 2020, dated 04.11.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Kali @ Kaliraja, S/o.Mayandithevar, aged about 48 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 (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

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,
Fort. St. George,
Chennai-600 009.

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



2.The District Collector and District Magistrate,
Theni District,
Theni.

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

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

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

H.C.P. (MD) No.1221 of 2020
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RD(13.09.2021) 4P 6C