



H.C.P.(MD) No.1274 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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C.Mathiyas

... Petitioner

-VS-

1.State of Tamil Nadu,
Rep. by Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai.

2.The District Collector and District Magistrate,
Kanyakumari District at Nagercoil.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records pertaining to the order of detention



H.C.P.(MD) No.1274 of 2022

passed in P.D.No.43/2022, dated 01.07.2022 by the second respondent and set aside the same and consequently directing the respondents to produce the detenu Rajeswaran son of Mathiyas, aged about 26 years before this Court, who is confined in Central Prison, Palayamkottai, Tirunelveli District and set him at liberty.

For Petitioner : Mr.C.Cenil

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The petitioner is the father of the detenu viz., Rajeswaran, aged about 26 years, S/o.Mathiyas. The detenu has been detained by the second respondent by his order in P.D.No.43/2022, dated 01.07.2022 holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this habeas corpus petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.



H.C.P.(MD) No.1274 of 2022

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3. Though the detention order is of the year 2022, the Hon'ble Division Bench of this Court, by order dated 20.06.2023 has passed the following order:-

"In these batch of Habeas Corpus Petitions among various grounds that has been raised on behalf of the detenues, three grounds particularly, raised by the detenues side are under consideration before us.

2. The first issue is that the non intimation of the arrest in the ground case whether would be a fatal to the subsequent detention order passed under Act 14 of 1982.

3. The second issue is whether the non-supply of entire materials or documents pertaining to the similar case that has been referred by the detaining authority in the detention order would also be a fatal to the detention order and the third issue is whether all the documents that has been mentioned in the grounds of detention irrespective of the fact whether it is relied upon document or not with translated version in vernacular to be supplied to the detenu.

4. In respect of these three issues, so far as the first two issues are concerned there are judgments taking divergent views, therefore, we thought of necessarily to refer these two issues to be decided by an authoritative pronouncement by the Full Bench and



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WEB COPY *our reasoning for such reference would follow.*

5. In respect of third issue, we are deciding that issue and our reasoning for deciding the third issue also would follow.

6. In view of the aforestated as that would take some reasonable time to refer the matter to the Full Bench and Constitution of the Full Bench to decide those issues by giving authoritative pronouncement will naturally take some reasonable time, we feel that in the meanwhile, since atleast in respect of those two issues i.e., issue No.1 and 2 are concerned judgments have already been issued, taking the view in some judgments in favour of the detenues, by giving such benefit to the detenues in these cases, we feel that the respective detention order which are impugned in this batch of cases are concerned, such detention can be suspended by way of giving direction to make temporary release of these detenues as of now.

7. In view of the aforestated, there shall be a direction to the respondents to temporarily release the detenues concerned in these cases by way of an interim suspension of the detention order forthwith, provided their confinement is not required in any other cases.

8. Post these matters for detailed judgment on 28.06.2023.

9. In view of the temporary release that has been



H.C.P.(MD) No.1274 of 2022

WEB COPY *ordered now under Section 15 of the Act 14 of 1982, they have to execute a bond and that shall be complied with by the detenues or on their behalf to the satisfaction of the jail authorities."*

4. Thereafter, a detailed order was passed by the Division Bench of this Court on 30.06.2023 referring the matter to the Full Bench of this Court. After reference, the Full Bench of this Court by passing a detailed order dated 28.03.2024 answered the issue No.1 and No.2 in negative and directed all the H.C.Ps., to be listed before the concerned Bench for decision based on the facts and circumstances of each individual cases in the light of the above pronouncement to the issues referred.

5. In view of the above, this individual case is taken up for hearing to be decided on its own merits.

6. Though several grounds have been raised in the habeas corpus petition, learned counsel for the petitioner focused mainly on the ground that there is an unexplained delay in considering the representation of the petitioner,



H.C.P.(MD) No.1274 of 2022

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dated 11.07.2022. According to the learned counsel for the petitioner, though the representation is dated 11.07.2022, the same was received by the Government on 16.08.2022 and the rejection letter was sent to the detenu on 27.08.2022. There is a delay of 5 days in considering the petitioner's representation. The said delay of 5 days in considering the representation remains unexplained and the same vitiates the impugned detention order. In support of his contention, learned counsel for the petitioner relied on the Judgment of the Honourable Supreme Court in *Rajammal vs. State of Tamil Nadu*, reported in (1999) 1 SCC 417.

7. Learned Additional Public Prosecutor, on instructions, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the impugned 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.

8. As per the submission of the learned counsel for the petitioner and on perusal of the records, we find that the representation of the petitioner is dated



H.C.P.(MD) No.1274 of 2022

11.07.2022, which was received by the Government on 16.08.2022 and the rejection letter was sent to the detenu on 27.08.2022. As per the proforma submitted by the learned Additional Public Prosecutor, there is a delay of 5 days in considering the representation of the petitioner and we find that the said delay remains unexplained.

9. It is trite law that the representation should be very expeditiously considered and disposed of with a sense of urgency and without avoidable delay. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. From the records produced, we find that no acceptable explanation has been offered for the delay of 5 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

10. In the above cited decision of the Honourable Supreme Court in ***Rajammal***'s case, it has been held as follows:

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu



H.C.P.(MD) No.1274 of 2022

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without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest."

11. As per the dictum laid down by the Supreme Court in above cited ***Rajammal's*** case, number of days of delay is immaterial and what is to be considered is whether the delay caused has been properly explained by the authorities concerned. But, in the instant case, the inordinate delay of 5 days has not been properly explained.

12. Further, in a recent decision in ***Ummu Sabeena vs. State of Kerala-2011 STPL (Web) 999 SC***, the Honourable Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on procedural safeguards. The expression 'as soon as may be', in Article 22(5) of the Constitution of India clearly shows the concern of the makers of the Constitution that the representation made on behalf of the detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.



H.C.P.(MD) No.1274 of 2022

WEB COPY

13. In the light of the above discussion, we have no hesitation in quashing the order of detention on the ground of delay on the part of the Government in disposing of the representation of the petitioner.

14. In the result, the Habeas Corpus Petition is allowed and the detention order in P.D.No.43/2022, dated 01.07.2022 is set aside. It is reported that pursuant to the order passed by this Court, dated 20.06.2023, the detenu had already been granted interim suspension and he is not in prison. Now that the Habeas Corpus Petition is allowed, the petitioner need not surrender before the prison authorities.

[A.D.J.C., J.] [K.R.S., J.]

23.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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H.C.P.(MD) No.1274 of 2022

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