



H.C.P.(MD) No.2 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2024

CORAM:

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

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Arunachalam

... Petitioner

-vs-

1.The Principal Secretary to Government
Home Prohibition and Excise Department
Secretariat, Chennai-9

2.The Commissioner of Police
Madurai, Madurai City

3.The Superintendent of Prison
Central Prison, Madurai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records in detention order No. 85/BCDFGISSSV/2023, dated 13.10.2023, on the file of the second respondent and quash the same and direct the respondents herein to produce



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the body of the petitioner's son, namely, Velmurugan @ Doal, son of Arunachalam, aged about 27 years, now confined in Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Chandrabose

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., Velmurugan @ Doal, aged about 27 years. The detenu has been detained by the second respondent by his order No.85/BCDFGISSSV/2023, dated 13.10.2023, 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.



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3. Though several grounds have been raised in the habeas corpus petition, learned counsel appearing for the petitioner would mainly focus his arguments on the grounds of delay in passing the impugned detention order after the arrest of the detenu and delay in considering the petitioner's representation.

4. According to the learned counsel for the petitioner, there is an inordinate delay between the arrest of the detenu and passing the impugned detention order and in this case, the detenu was arrested on 02.09.2023, and the impugned detention order came to be passed only on 13.10.2023, i.e., after a lapse of more than one month. This inordinate delay in passing the detention order would vitiate the same. He further submitted that there is no live and proximate link between the date of arrest and the date of the detention order.

5. Further, according to the learned counsel for the petitioner, though the representation is dated 18.12.2023, the same was received by the Government on 20.12.2023 and the rejection letter was sent to the detenu on 05.01.2024. There is a delay of seven days in Column Nos.10 to 12 of the



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Proforma in considering the petitioner's representation. The said delay of seven 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**. Hence, on these grounds, the present impugned detention order is also liable to be set aside.

6. Learned Additional Public Prosecutor appearing for the respondents strongly opposed the habeas corpus petition by filing his counter. He would submit that though there was a delay in passing the impugned detention order and in considering the petitioner's representation, on that score alone, it cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and therefore prays for dismissal of the habeas corpus petition.

7. Though it has been stated by the respondents that collection of details has caused the delay in passing the impugned detention order, a perusal of the grounds of the detention order passed by the detaining authority shows that there is only one adverse case against the detenu. The



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detenu was arrested in the ground case as early as on 02.09.2023 and the detention order was passed on 13.10.2023. This shows an inordinate delay in passing the detention order, which is also unexplained. The live and proximate link between the arrest of the detenu and the need for passing the order of detention has snapped.

8. In the case of ***Sushanta Kumar Banik vs. State of Tripura***, reported in ***2022 SCC Online (SC) 1333***, when there was an inordinate delay from the date of proposal till passing of the detention order and likewise, between the date of actual arrest and the date of detention order, the Honourable Supreme Court has held that the live and proximate link, between the grounds and the purpose of detention, stands snapped throwing a considerable doubt on the genuineness of the requisite satisfaction of the detaining authority in passing the detention order unless such delay is satisfactorily explained and consequently making it invalid. The relevant portion is extracted hereunder:-

"20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the



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proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.”

9. Further, 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 18.12.2023, which was received by the Government on 20.12.2023 and the rejection letter was sent to the detenu on 05.01.2024. As per the proforma submitted the by the learned Additional Public Prosecutor, there is a delay of seven days in Column Nos.10 to 12 in considering the representation of the petitioner and we find that the said delay remains unexplained.



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10. 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 seven days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

11. 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 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."



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12. 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 seven days has not been properly explained.

13. 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.

14. In view of the above, as pointed out by the counsel for the petitioner, the delay in passing the impugned detention order and in considering the petitioner's representation has not been satisfactorily explained, thereby vitiating and invalidating the detention order.



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15. In the result, the Habeas Corpus Petition is allowed and the order of detention No.85/BCDFGISSSV/2023, dated 13.10.2023, passed by the second respondent is set aside. The detenu, viz., Velmurugan @ Doal, son of Arunachalam, aged about 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[A.D.J.C., J.]

[K.R.S., J.]

05.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.The Principal Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai-9.
- 2.The Commissioner of Police,
Madurai, Madurai City.
- 3.The Superintendent of Prison,
Central Prison, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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