



WEB COPY

H.C.P(MD)No.346 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.05.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MRS.JUSTICE R.THARANI

H.C.P(MD)No.346 of 2021

S.Syed Kader

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in M.H.S.Confdl No.06/2021, dated 08.02.2021 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 the petitioner's son ie., Seyad Sameer, aged about 36 years, S/o.Seyad Kadar, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

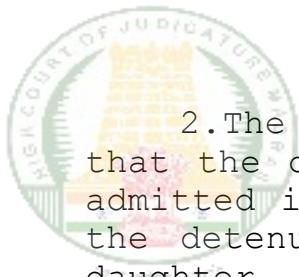
For Petitioner	: Mr.VR.Shanmuganathan for Mr.K.Muthurakkan
For Respondents	: Mr.S.Ravi Standing Counsel (Crl. Side)

ORDER

[Order of the Court was made by **V.M.VELUMANI, J.**]

The Habeas Corpus Petition has been filed by the father of the detenu, namely, Seyad Sameer, son of Seyad Kadar, aged about 36 years, who has been branded as "Sand Offender" by the second respondent in Detention Order in M.H.S.Confdl.No.06/2021, dated 08.02.2021, as contemplated under Section 2(gg) of the Tamil Nadu Act 14 of 1982.

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



2.The learned counsel appearing for the petitioner submitted that the detenu's wife and daughter are affected by COVID-19 and admitted in the Hospital for treatment and hence, the presence of the detenu is very much required to take care of his wife and daughter. The learned counsel appearing for the petitioner further submitted that due to the urgency, the present petition is moved in the Vacation Court. In order to substantiate the said contention, the learned counsel has filed the medical reports of the detenu's wife and daughter in the typed set of papers.

3.Learned Counsel for the petitioner submitted that, eventhough petitioner has raised various grounds, he has restricted his arguments only to the delay in disposal of petitioner's representation. It is submitted by the learned Counsel for the petitioner that procedural safeguards guaranteed under Articles 21 and 22 of Constitution of India have not been followed in this case and there is unexplained and inordinate delay in disposal of the representation which would vitiate the impugned order of detention.

4.Mr.S.Ravi, learned Standing Counsel appearing for the respondents would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the order of detention passed by the second respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

5.We have heard the rival submissions and perused the materials available on record.

6.In the instant case, it is not in dispute that the detenu was detained by the order of the second respondent, dated 08.02.2021. Aggrieved over the same, a representation, dated 27.02.2021 has been sent to the first respondent and the same was received on 02.03.2021 and on the same day, remarks were called for, but, the same were received only on 17.03.2021. The Deputy Secretary dealt with the matter on 18.03.2021. The concerned Minister dealt with the matter on 12.04.2021 and thereafter, the representation of the petitioner/detenu's father was rejected on 16.04.2021. It is seen that there was delay of 24 days between 18.03.2021 and 12.04.2021. It is also seen that there are 9 Government Holidays and after excluding the same, there is a delay of 15 days in considering the representation of the petitioner/detenu's father.



7. In the case of **Rajammal Vs. State of Tamil Nadu and another (1999 (1) SCC 417)**, the Honourable Apex Court 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 any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

8. In the case on hand, there is absolutely no explanation for the delay of 15 days in considering the representation of the petitioner/detenu's father. Hence, in our considered view, the detention order is liable to be set aside on the ground of delay by following the decision of the Honourable Apex Court referred supra.

9. In fine, the order of detention passed by the second respondent, in M.H.S.Confdl No.06/2021, dated 08.02.2021, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, S.Seyad Sameer, aged about 36 years, Son of Seyad Kadar, who is detained at Central Prison, Palayamkottai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar/
Vacation Officer (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

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 Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.



2. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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VB(03/06/2021) 4P / 5C