



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1141 of 2014

K.Raman

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep by the Secretary to Government,
Secretariat, Public [Law and Order] F Department,
Chennai 600 009.
 - 2.The Secretary to the Government of India,
Ministry of Home Affairs, Department of Internal Security,
New Delhi 1.
 - 3.The District Collector and District Magistrate,
Sivagangai District, Sivagangai.
 - 4.The Superintendent,
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 records in connection with Cr.M.P.No.01/NSA/2014, dated 30.08.2014 and quash the same and to direct the respondents to produce the petitioner's son namely, R.Kalai @ Kalailingam S/o.Raman, aged about 39 years, now detained under National Security Act, 1980 in Central Prison, Madurai before this Court and set him at liberty.

For petitioner : Mr.P.Pugalenth
For respondent Nos.1,3&4 : Mr. K.Chellapandian
Additional Advocate General
Assisted by Mr.C.Ramesh
Additional Public Prosecutor

For Respondent No.2 : Mr.J.Jeyakumaran
Central Government Standing Counsel

O R D E R

[Order of the Court was made by V.S.RAVI,J]

The petitioner is the father of one Mr.R.Kalai @ Kalailingam. He has been detained as per the order of the third respondent under sub-section 2 of Section 3 of the National Security Act, 1980, [Central Act 65 of 1980], by order dated 30.08.2014, in Cr.M.P.No.01/NSA/2014.



2. We have heard the learned counsel for the petitioner and the learned Additional Advocate General for the respondents and we have also perused the records carefully.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the Petitioner would mainly focus his argument on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon'ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

4. But, the learned Additional Advocate General would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. We have considered the above submissions.

6. In this case, the Detention Order was passed on 30.08.2014. As against the same, the petitioner made a representation on 11.09.2014. The remarks were called for by the Government from the Detaining Authority on 16.09.2014. The remarks were submitted by the Detaining Authority on 18.09.2014. Thereafter, the Government considered the issue and passed the order rejecting the representation on 26.09.2014. It is the contention of the petitioner that there was delay of one day in submitting the remarks by the Detaining Authority and there was delay of seven days on the part of the Government in considering the same.

7. Now, the question is as to whether on that score, the impugned order can be quashed.

8. In *Rekha Vs. State of Tamil Nadu*, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu.

9. In *Sumaiya Vs. The Secretary to Government*, [2007 (2) MWN (Cr.) 145], a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu/detenu would be sufficient to set aside the detention order.

10. In *Tara Chand Vs. State of Rajasthan and others*, [1980 (2) SCC 321], the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been



followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

11. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of seven days and therefore, the impugned detention order is liable to be quashed.

12. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the third respondent, in his proceedings in Cr.M.P.No.01/NSA/2014, dated 30.08.2014, is quashed. The detenu, by name, Mr.R.Kalai @ Kalailingam, S/o.Raman, aged about 39 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

The Assistant Registrar(CO)

/True copy/

Sub-Assistant Registrar

To:

- 1.The Secretary to Government, State of TamilNadu
Secretariat, Public [Law and Order] F Department,
Chennai 600 009.
- 2.The Secretary to the Government of India,
Ministry of Home Affairs, Department of Internal Security,
New Delhi 1.
- 3.The District Collector and District Magistrate,
Sivagangai District, Sivagangai.
- 4.The Superintendent,
Central Prison, Madurai.
- 5.The Joint Secretary to Government Public (Law and Order)
Secretariat, Chennai-9.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.J.Jeyakumaran, Advocate SR.No.44812

NB

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ORDER MADE IN
H.C.P (MD) No.1141 of 2014
05.08.2015