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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1234 of 2015

M.Esakki

: Petitioner

Vs.

1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort.St.George, Chennai 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli District.

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

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order of the second respondent in No.60/BCDFISSSV/2015, dated 22.07.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name M.Esakki, S/o.Murugan, aged about 22 years, now detained at Palayamkottai Central Prison before this Court and set him at liberty.

For Petitioner : Mr.D.Selvanayagam

For Respondents : Mr.A.Ramar
Additional Public Prosecutor.

O R D E R

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

The petitioner/detenu - M.Esakki, S/o.Murugan, aged about 22 years, has been detained, as per the order of the second respondent, dated 22.07.2015, under Section 2(f) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), read with the order issued by the Government in G.O.(D).No.142, Home Prohibition and Excise (XVI) Department, dated 18.07.2015, under Sub-Section (2) of Section 3 of the



said Act, branding him as "Goonda". Challenging the same, he has come up with this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. 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. The learned Additional Public Prosecutor 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 22.07.2015. As against the same, the petitioner made a representation dated 18.08.2015, as per the details mentioned in page No.6, of the counter affidavit filed by the second respondent. The remarks were called for by the Government from the Detaining Authority on 24.08.2015. The remarks were received on 26.08.2015. Thereafter, the Government considered the issue and passed the order rejecting the representation on 04.09.2015. It is the contention of the petitioner that there was delay of seven working days in considering the representation.

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 would be sufficient to set aside the detention order.

<https://hcservices.ecourts.gov.in/hcservices/>
10. In *Pradeep 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 working days and therefore, the impugned detention order is liable to be quashed.

12. In the result, this Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 22.07.2015, made in 60/BCDFISSSV/2015, passed by the second respondent and directs the release of the detenu, by name M.Esakki, S/o.Murugan, aged about 22 years, forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort.St.George, Chennai 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli District.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District. (in duplicate to communicate the detenu)
- 4 The Joint Secretary, Government of Tamil Nadu,
Public (Law & order) Department, Fort St. George, Chennai 600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.S.Malaikani, Advocate in SR.No. 69122

TS/04.12.2015/3P-8C/DP-JGB/SAR - I

ORDER MADE IN
H.C.P (MD) No.1234 of 2015