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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1356 of 2015

Lakshmanan

: Petitioner

Vs.

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

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

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai 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.118/BCDFGISSSV/2015, dated 03.09.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Lakshmanan S/o.Alagar, aged about 26 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner

: Mr.R.Alagumani

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 - Lakshmanan S/o.Alagar, aged about 26 years, has been detained, as per the order of the second respondent, dated 03.09.2015, 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.139, 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.

4. The learned counsel would further submit that there was denial of reasonable opportunity to challenge the order of detention in an effective manner by the non-supply of a copy of the Government Order extending the delegation of power to the Detaining Authority. The failure to supply a copy of the Government Order even after a representation was made in writing seeking supply of the same amounts to denial of justice vitiating the order of detention itself. Based on the same, the learned counsel would plead for setting aside the detention order.

5. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

6. In this case, the Detention Order was passed on 03.09.2015. As against the same, the petitioner made a representation dated 09.09.2015, as per the details mentioned in the counter affidavit filed by the second respondent. The remarks were called for by the Government from the Detaining Authority on 18.09.2015. The remarks were received on 21.09.2015. Thereafter, the Government considered the issue and passed the order rejecting the representation on 08.10.2015. It is the contention of the petitioner that there was delay of nearly 13 working days in considering the representation and rejecting the same. For better appreciation, it would be worthwhile to refer to the relevant paragraph of the counter, which is extracted hereunder:-

"The representation dated 09.09.2015 [not 07.09.2015, as stated in affidavit] submitted by the petitioner to the State Government [Respondent No.1] was received by the detaining authority from the Government on 18.09.2015 and remarks for the same was sent to the Government on 21.09.2015, without any delay, as detailed below:-

Representation received from the Government	: 18.08.2015
Remarks called for from the Sponsoring Authority	: 18.09.2015
Remarks received from the Sponsoring Authority	: 21.09.2015
Reply sent to the Government	: 21.09.2015
[Saturday and Sunday Holidays on 19.09.2015 and 20.09.2015].	

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Based on which, the State Government has also rejected the said representation vide its Lr.No.19781/Home, P&E, (IX)/2015, dated 08.10.2015".



Thus, from the above extracted portion, it is clear that there was delay of 13 days in considering the representation and rejecting 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 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 13 working days and therefore, the impugned detention order is liable to be quashed.

12. So far as the other contention is concerned, admittedly, the power delegated to the Detaining Authority was being periodically extended by fresh Government Orders passed once in three months and a copy of the latest Government Order extending the delegation, which has been referred to in the detention order, has not been furnished to the detenu. Though non-furnishing of the same initially may not be taken serious note of, when a representation is made seeking a copy of the said Government Order to make an effective challenge to the detention order, such request ought to have been considered properly and the failure to do so and the mechanical rejection of such request amounts to denial of reasonable opportunity to make an effective challenge to the order of detention. On that score also, the order of detention is liable to be set aside.

13. In the result, this Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 03.09.2015, made in 118/BCDFGISSSV/2015, passed by the second respondent and directs the release of the detenu, by name Lakshmanan S/o. Alagar, aged about 26 years, forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar

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



To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise [IX] Department,
State of Tamil Nadu, Secretariat,
Fort.St.George, Chennai 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai District.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai 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.R.Alagumani, Advocate in SR.No. 71284

TS/11.12.2015/4P-8C/NGM-SS/SAR - II

ORDER MADE IN
H.C.P (MD) No.1356 of 2015

Dated: **09.12.2015**