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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.484 of 2015

Amaravathi ... Petitioner

Vs.

1. State of Tamil Nadu rep. By,
   The Secretary to Government,
   Home, Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The District Collector and District Magistrate,
   Theni District, Theni.

3. The Superintendent of Police,
   Theni District, Theni.

4. The Inspector of Police,
   Cumbum North Police Station,
   Theni District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records relating to the Detention Order passed by the second respondent in Detention Order No.15/2015/C3 dated 25.03.2015 and quash the same and direct the respondents to produce the detenu Thiru.Mookkan, S/o.Rama Thevar, Male, aged 70 years who is detained at Central Prison, Madurai before this Court and set him at liberty.

For petitioner : Mr. S.Muniyandi
For respondents : Mr. T.Mohan
Additional Public Prosecutor

ORDER

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

The petitioner is the daughter-in-law of one Mookkan. He has been detained as per the order of the second respondent under Section 2(e) of the Tamil Nadu Act 14 of 1982, branding him as ***"Drug Offender"***.

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

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3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the Petitioner would mainly

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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 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 25.03.2015. As against the same, the petitioner made a representation on 10.04.2015. The remarks were called for by the Government from the Detaining Authority on 10.04.2015. The remarks were received by the Detaining Authority on 22.04.2015. Thereafter, the Government considered the issue and passed the order rejecting the representation on 05.05.2015. It is the contention of the petitioner that there was delay of seven days on the part of the Detaining authority in considering the representation and there was delay of five 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/detenue 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 twelve working days and therefore, the impugned detention order is liable to be quashed.

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12. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in No.15/2015/C3 dated 25.03.2015 is quashed. The detenu, by name, Mookkan, S/o.Rama Thevar, aged 70 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-
Assistant Registrar (C.O.)

/True Copy/

Sub Assistant Registrar

To:

1. The Secretary to Government,
   State of Tamil Nadu
   Home, Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The District Collector and District Magistrate,
   Theni District, Theni.

3. The Joint Secretary to Government,
   Public (Law and Order), Fort St.George, Chennai -9.

4. The Superintendent of Police, Theni District, Theni.

5. The Inspector of Police,
   Cumbum North Police Station, Theni District.

6. The Superintendent,
   Central Prison, Madurai.
   (In Duplicate to communicate the detenu)

7. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.S.Muniyandi, Advocate Sr.No.46292

akm/20.08.15 /3p-10c/

ORDER MADE IN
H.C.P(MD)No.484 of 2015
13.08.2015

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