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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.09.2015**

CORAM:

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

H.C.P(MD)No.668 of 2015

Muthukumar .. Petitioner

Vs.

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

2. The Commissioner of Police,
   O/o. The Commissioner of Police,
   Madurai City, Madurai.

3. The Superintendent of Prison,
   Madurai Central Prison,
   Madurai District. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records, connected with the Detention Order of the Respondent No.2 in Detention Order No.57/BCDFGISSSV/2015 dated 15.04.2015 and quash the same and direct the respondents to produce the detenu by name Muthukumar, S/o. Muthuraja, aged 24 years, now detained at Central Prison, Madurai.

For Petitioner : Mr.S.Malaikani, Advocate
For Respondents : Mr. T.Mohan
Additional Public Prosecutor

ORDER

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

The petitioner is the detenu. He has been detained as per the order of the 2nd respondent under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as ***"Goonda"***.

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 focus his argument on the ground that there is violation of

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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 15.04.2015. As against the same, the petitioner made a second representation on 05.05.2015. The remarks were called for by the Government from the Detaining Authority on 08.05.2015. The remarks were received by the Detaining Authority on 15.05.2015. Thereafter, the Government considered the issue and passed the order rejecting the representation on 02.06.2015. It is the contention of the petitioner that there was delay of five days on the part of the Detaining authority in considering the representation and there was delay of six 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.

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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 eleven working 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 2nd respondent, in his Detention Order No.57/BCDFGISSSV/2015 dated 15.04.2015 is quashed. The detenu, by name, Muthukumar, S/o. Muthuraja, aged 24 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,
   Home, Prohibition and Excise Department,
   State of Tamil Nadu, Secretariat,
   Fort St. George, Chennai - 600 009.

2. The Commissioner of Police,
   O/o. The Commissioner of Police,
   Madurai City, Madurai.

3. The Superintendent of Prison,
   Madurai Central Prison, Madurai District.
   (In Duplicate to communicate the detenu)

4. The Additional Director General of Police,
   Law and Order, Chennai -4.

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

+1cc to Mr.S.Malaikani, Advocate Sr.No.54866

akm/22.09.15 /3p-7c/

ORDER MADE IN
H.C.P(MD)No.668 of 2015
16.09.2015

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