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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.914 of 2015

Bose Gandhi .. Petitioner

Vs.

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

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

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

PRAYER: Petition filed under Article 226 of the Constitution of India praying to call for the entire records connected with the detention order of the second respondent in Detention order No.45/2015 dated 13.06.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Bose Gandhi, S/o.Thangam, aged about 35 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 is the detenu, namely Bose Gandhi. He has been detained as per the order of the second respondent under Section 2(b) of the Tamilnadu Act 14 of 1982, branding him as **"Bootlegger"**. Challenging the same, he has come up with this 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.

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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 procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representations made by the petitioner were 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 representations, 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 13.06.2015. As against the same, the petitioner made two representations. In the first representation, the remarks were called for by the Government from the Detaining Authority on 22.06.2015. The remarks were received on 03.07.2015. Thereafter, the Government considered the issue and passed the order rejecting representation on 15.07.2015. It is the contention of the petitioner that there was delay of nine days in submitting the remarks by the Detaining Authority and there was delay of six days on the part of the Government in considering the same.

7. Also, for the second representation, the remarks were called for by the Government from the Detaining Authority on 24.07.2015. The remarks were received on 31.07.2015. Thereafter, the Government considered the issue and passed the order rejecting representation on 14.08.2015. It is the contention of the petitioner that there was delay of five days in submitting the remarks by the Detaining Authority and there was delay of eight days on the part of the Government in considering the same.

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

9. 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.

10. 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.

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11. In Tara Chand Vs. State of Rajasthan and others, [1980 (2) SCC 321], the Hon'ble Supreme Court has held that any inordinate and

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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.

12.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 fifteen working days with regard to the first representation and thirteen working days with regard to the second representation and therefore, the impugned detention order is liable to be quashed.

13. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order passed by the second respondent, in his proceedings in Detention Order No.45 of 2015, dated 13.06.2015, is quashed. The petitioner/detenu, by name, Bose Gandhi S/o.Thangam aged about 35 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

//True Copy//

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

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

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

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

4.The Addl.Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.R.Alagumani, Advocate in SR.No. 66932

TS/23.11.2015/3P-7C/MP/SAR I

Order Made in
H.C.P(MD)No.914 of 2015

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