



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

H.C.P(MD)No.638 of 2016

P.Sargunavathi

.. Petitioner

Vs.

1. The State of Tamil Nadu rep by
The Secretary to Government,
Home, Prohibition and Excise Department,
Chennai 9.
 2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruvarur District, Tiruvarur.
 3. The Superintendent,
Central Prison, Tiruchirappalli.
- .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records connected with the detention order passed in C.O.C.No.14 of 2016, dated 17.05.2016, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son, namely, Nedumaran, S/o.Panddarinathan, Male, aged about 23 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For petitioner : Mr.K.A.S.Prabhu

For respondents : Mr.C.Ramesh

Additional Public Prosecutor

O R D E R

[Order of the Court was made by S.NAGAMUTHU ,J.]

The petitioner is the father of one Mr.Nedumaran. The detenu has been detained as per the order of the second respondent, by order dated 17.05.2016, in C.O.C.No.14 of 2016. Challenging the said order, the petitioner is now before this Court with this Habeas

Corpus Petition

<https://hcservices.ecourts.gov.in/hcservices/>

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.

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. But, the learned Additional Advocate General 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.

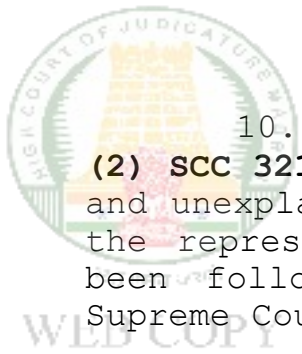
5. We have considered the above submissions.

6. In this case, the Detention Order was passed on 17.05.2016. As against the same, the petitioner made a representation 23.05.2016. The remarks were called for by the Government from the Detaining Authority on 26.05.2016. The remarks were submitted by the Detaining Authority on 06.06.2016. Thereafter, the Government considered the issue and passed the order rejecting the representation on 29.06.2016. It is the contention of the petitioner that there was delay of 10 days in submitting the remarks by the Detaining Authority and again, there was a delay of 22 days in considering and rejecting the representation of the petitioner.

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 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 second respondent, in his proceedings in C.O.C.No.14 of 2016, dated 17.05.2016, is quashed. The detenu, by name, Nedumaran, S/o.Panddarinathan, Male, aged about 23 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 (CS-II)

/True Copy/

Sub Assistant Registrar

To:

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Chennai 9.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruvarur District, Tiruvarur.
3. The Superintendent,
Central Prison, Tiruchirappalli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai 600 009.

NB

TE/CK : 08/11/2016 : 3P/6C

ORDER MADE IN
H.C.P (MD) No.638 of 2016
25.10.2016