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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.12.2016
CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
H.C.P.(MD)No.934 of 2016

Mani @ Mullamani : Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Kanniyakumari District at Nagarcoil.

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

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the entire records, connected with the detention order of the respondent No.2 in P.D.No.43/2016, dated 16.07.2016 and quash the same and direct the respondents to produce the detenu, by name Mani @ Mullamani, son of Ganesan, aged about 32 years, detained in Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

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ORDER

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[Order of the Court was made by R.SUBBIAH, J.]

The petitioner is the detenu viz., Mani @ Mullamani, Son of Ganesan, aged about 32 years. The detenu has been detained, as per the order of the second respondent, dated 16.07.2016, under Section 2(e) of the Tamil Nadu Act 14 of 1982, branding him as "Drug Offender". Challenging the same, he has come up with this Habeas Corpus Petition.

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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. 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 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 16.07.2016. As against the same, the petitioner made a representation on 19.07.2016. The remarks were called for by the Government from the Detaining Authority on 22.07.2016. The remarks were received on 19.08.2016. Thereafter, the Government considered the issue and passed the order rejecting the representation on 24.08.2016. It is the contention of the petitioner that there was delay of 19 days in submitting the remarks by the Detaining Authority and there was delay of 2 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 Geneeva 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

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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 21 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 second respondent, in his proceedings in P.D.No.43/2016, dated 16.07.2016, is quashed. The detenu, namely Mani @ Mullamani, Son of Ganesan, aged about 32 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(writs)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Kanniyakumari District at Nagarcoil.

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

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

Order made in
H.C.P.(MD)No.934 of 2016
Dated:08.12.2016

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