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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2018

CORAM:
THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

HCP [MD].No.1683 of 2017

Dharman @ Dharmadurai : Petitioner

Vs.

1.State of Tamil Nadu
Represented by the Principal Secretary to Government,
Home,Prohibition and Excise Department,
Fort.St.Georage,
Chennai-9.

2.The District Magistrate and District Collector,
O/o. The District Magistrate and District Collector,
Karur District,
Karur.

3.The Superintendent,
Central Prison,
Tiruchirappalli : 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 in detention order passed in Cr.M.P.No.06 of 2017 dated 24.10.2017 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Dharman @ Dharmadurai, S/o. Sekar, male aged 33 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

ORDER

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

The petitioner is the detenu viz.,Dharman @ Dharmadurai, S/o. Sekar, male aged about 33 years. The detenu has been detained, as per the order of the second respondent, dated 24.10.2017, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "Goonda". Challenging the same, the petitioner has come up with this Habeas Corpus 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 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 24.10.2017. As against the same, the petitioner made a representation on 14.11.2017. The remarks were called for by the Government from the Detaining Authority on 20.11.2017. The remarks were received on 01.12.2017. Thereafter, the Government considered the issue and passed the order rejecting the representation on 15.12.2017. It is the contention of the petitioner that there was delay of 9 days in receiving the remarks and there was delay of 9 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

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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.In the decision in JAYANARAYAN SUKUL v. STATE OF WEST BENGAL reported in AIR 1970 SC 675, it has been held that the Government has to be vigilent in the governance of the citizens and that the representation should be considered as early as possible without any delay.

12.If any representation is received prior to passing the order of detention, the four principles are to be followed in letter and spirit, which reads as follows:-

> "First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to measure the time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board."

13. 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 9 working days in receiving the remarks and 9 working days delay on the part of the Government in considering the same and therefore, the impugned detention order is liable to be quashed.

14. 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 Cr.M.P.No.06 of 2017 dated 24.10.2017 is quashed. The detenu, namely, Dharman @ Dharmadurai, S/o. Sekar, male aged about 33 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(T&P)

/True Copy/

Sub Assistant Registrar

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To

1.The Principal Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St. George Chennai-600009.

2.The District Magistrate and District Collector,
O/o. The District Magistrate and District Collector,
Karur District,
Karur.

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
(in duplicate for communication to the detenu)

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

ORDER MADE IN
HCP [MD].No.1683 of 2017
12.02.2018

RR
AM/SV MMS/SAR 4/12.02.2018/4P/6C

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