



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2018

CORAM:

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

HCP [MD].No.1766 of 2017

Muthaiyan : Petitioner

Vs.

1. State represented by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate,
Kanniyakumari District at Nagercoil.
3. The Inspector of Police,
Karungal Police Station,
Kanniyakumari District.
4. The Superintendent,
Central Prison,
Palayamkottai.

: 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 pertaining to the order of the detention passed by the 2nd respondent vide his proceedings in No.P.D.73/2017, dated 11.11.2017 and quash the same and consequently set the detenue Babu alis Soban Babu S/o.Muthaiyan, aged 24 years, who is detained in Central Prison, Palayamkottai, at liberty.

For Petitioner : Mr.B.Tamil Nidhi

For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor

**ORDER**

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

The petitioner is the father of the detenu viz., Babu @ Soban Babu, S/o.Muthayan, aged about 24 years. The detenu has been detained, as per the order of the second respondent, dated 11.11.2017, under Section 2(ggg) of the Tamil Nadu Act 14 of 1982, branding him as "Sexual Offender". 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.

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 11.11.2017. As against the same, the petitioner made a representation on 20.11.2017. The remarks were called for by the Government from the Detaining Authority on 05.12.2017. The remarks were received on 21.12.2017. Thereafter, the Government considered the issue and passed the order rejecting the representation on 27.12.2017. It is the contention of the petitioner that there was delay of 12 days in submitting the remarks by the detaining authority.

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

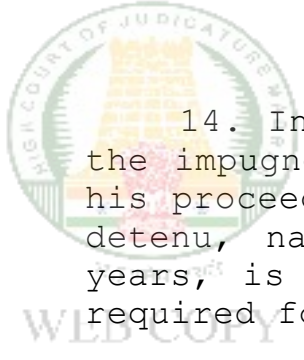
<https://hcservices.courts.gov.in/Replies/> Vs. State of Tamil Nadu, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of

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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.

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:-

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 12 working days in ~~senior court in the case~~ [senior court in the case](https://www.seniorcourt.in/cases) remarks by the detaining authority 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 P.D.No.73/2017 dated 11.11.2017 is quashed. The detenu, namely Babu @ Soban Babu, S/o.Muthayan, aged about 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(W)

/True copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The Joint Secretary,
Public (Law and Order) Department,
Fort St. George, Chennai.
3. The District Collector and District Magistrate,
Kanniyakumari District at Nagercoil.
4. The Inspector of Police,
Karungal Police Station,
Kanniyakumari District.
5. The Superintendent,
Central Prison, Palayamkottai.
(in duplicate for communication to the detenu)
6. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.B.Tamil Nidhi, Advocate, in SR No.46704

ORDER MADE IN
HCP [MD].No.1766 of 2017
07.02.2018

Ls/RJ2
MKV-CM-VR-SAR 3/7.2.2018/4P-9C