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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
H.C.P(MD)No.1275 of 2018

Pappa

: Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition & Excise Department,
Fort.St.George, Secretariat,
Chennai - 600 009.

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

3.The Inspector of Police,
Thalaiyuthu Police Station,
Tirunelveli District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the records relating to the detention order passed by the second respondent in M.H.S.Confdl.No.83/2018, dated 01.08.2018, quash the same and direct the respondents to produce the body of the detenu, namely Mookkan alias Raja, aged about 26 years, S/o.Velu who is confined at Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner

: Mr.A.Jayaramachandran

For Respondents

: Mr.K.Dinesh Babu,

Additional Public Prosecutor.

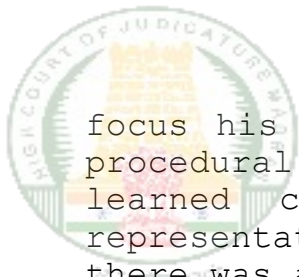
O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the mother of the detenu - Mookkan alias Raja, S/o.Velu, aged about 26 years. The detenu has been detained by the second respondent by her order in M.H.S.Confdl.No.83/2018, dated 01.08.2018, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in 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 produced by the Detaining Authority.

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 gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

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4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, 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. The Detention Order in question was passed on 01.08.2018. The petitioner made a representation dated 16.08.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 21.08.2018. The remarks were duly received on 30.08.2018. Thereafter, the Government considered the matter and passed the order rejecting the representation on 01.10.2018.

6. It is the contention of the petitioner that there was a delay of 6 days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of 19 days in considering the representation.

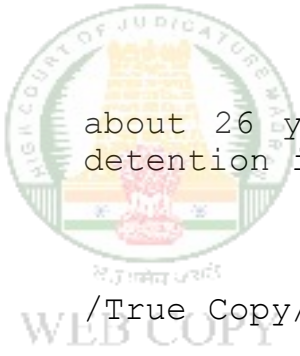
7. In *Rekha Vs. State of Tamil Nadu*, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

8. 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 order of detention.

9. 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 very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 6 days in submitting the remarks by the Detaining Authority and 19 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition shall stand allowed and the Detention Order, passed by the second respondent, in her proceedings in M.H.S.Confdl.No.83/2018, dated 01.08.2018, is quashed. The detenu, namely, Mookkan alias Raja, S/o.Velu, aged



about 26 years, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort.St.George, Secretariat,
Chennai - 600 009.
 - 2.The District Collector and District Magistrate,
Tirunelveli District.
 - 3.The Joint Secretary to Government,
Public (Law and Order)
Fort.St.George, Chennai - 600 009.
 - 4.The Superintendent, Central Prison,
Palyamkottai, Tirunelveli District.
 - 5.The Inspector of Police,
Thalaiyuthu Police Station,
Tirunelveli District.
 - 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 1 CC TO Mr.A.Jayaramachandran , ADVOCATE IN SR No.94471.
SML
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Order made in
H.C.P (MD)No.1275 of 2018
Dated: 01.11.2018