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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M. NIRMAL KUMAR

H.C.P. No.721 of 2019

Elumalai

... Petitioner

-vs-

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

2.The Commissioner of Police,
Salem City,
Salem District.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the order of 2nd respondent herein concerned in C.M.P.No./4/Goonda/Salem City/2019 dated 13.02.2019 and quash the order of detention passed therein by the 2nd respondent herein against the detenu and consequently directing the respondents herein to produce the body and person of the detenu by name Prabhu aged about 37 years, son of Elumalai now detained in Central Prison, Salem before this Hon'ble Court and set him at liberty.

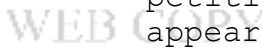
For Petitioner : Mr.K.Balu

For Respondents : Mr.C.Iyyappa Raj
Addl.Public Prosecutor

ORDER

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

The petitioner is the father of the detenu, Prabhu, Son of Elumalai, aged about 37 years. The detenu has been detained by the second respondent by his order in C.M.P.No./4/Goonda/Salem City/2019 dated 13.02.2019, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.



2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

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.

6. It is the contention of the petitioner that there was a delay of 20 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holidays and hence there was an inordinate delay of 14 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 04.04.2019 and there was delay of 26 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 11 days were Government Holidays, hence, there was inordinate delay of 15 days in considering the representation. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 02.05.2019.

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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.

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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*, reported in 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 14 days in submitting the remarks and 15 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No./4/Goonda/Salem City/2019 dated 13.02.2019 passed by the second respondent is set aside. The detenu, Prabhu, Son of Elumalai, aged about 37 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To:

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

2.The Commissioner of Police,
Salem City,
Salem District.



3. The Superintendent
Central Prison, Salem.

4. The Public Prosecutor,
High Court, Madras.

5. The Joint Secretary to Government,
Public (law & Order),
Fort Saint George, Chennai 9

H.C.P. No.721 of 2019

MP (CO)
GN (05/08/2019)