IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

Coram

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

H.C.P. No.924 of 2019

Viji @ Radio Viji ... Petitioner

-vs-.

1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St.George, Chennai - 600 009

2.The Commissioner of Police,
Chennai City Police,Greater Chennai,
Commissioner Office,
Vepery, Chennai - 600 007 ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in No.110/BCDFGISSSV/2019 dated 01.03.2019 on the file of the second respondent herein and set aside the same as illegal and produce the detenu Viji @ Radio Viji, Son of Thulasingam, aged about 39 years, who is confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

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For Petitioner : Mr.Ilayaraja Kandasamy

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

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ORDER

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

The petitioner, Viji @ Radio Viji, Son of Thulasingam, aged about 39 years, is the detenu. The detenu has been detained by the second respondent by his order in No.110/BCDFGISSSV/2019 dated 01.03.2019, holding 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 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.

3.Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing 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.

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 01.03.2019. The petitioner made a representation dated 07.05.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 13.05.2019. The remarks were duly received on 16.05.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.06.2019.

6. It is the contention of the learned counsel for the petitioner that there was a delay of 15 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 4 days were Government Holidays, hence, there was inordinate delay of 11 days in considering the

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representation. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.06.2019.

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, 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 11q 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 No.110/BCDFGISSSV/2019 dated 01.03.2019, passed by the second respondent is set aside. The detenu, Viji @ Radio Viji, Son of Thulasingam, aged about 39 years, is directed to be released forthwith unless his detention is required in connection with any other case.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS VI)

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//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Police,
Chennai City Police,Greater Chennai,
Commissioner Office,
Vepery, Chennai - 600 007

3.The Superintendent,
Central Prison,Puzhal, Chennai.

4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P. No.924 of 2019

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