



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

H.C.P. (MD) No. 366 of 2019

Arulraja @ Panchattai

: Petitioner

Vs.

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

2. The District Magistrate and District Collector,  
Office of the District Magistrate and District Collector,  
Tirunelveli District.

3. The Superintendent of Prison,  
Palayamkottai Central Prison,  
Tirunelveli District.

: 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, connected with the detention of the respondent No.2 in detention Order in MHS Confdl. No.33/2019 dated 12.04.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Arulraj @ Panchattai, son of Nainar, aged about 39 years, now detained at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.K.Dinesh Babu

Additional Public Prosecutor

**ORDER**

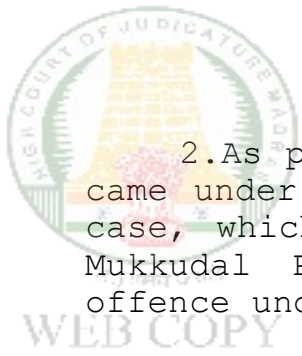
**S. VAIDYANATHAN, J.**

**AND**

**N. ANAND VENKATESH, J.**

Challenge is made to the order of detention passed by the second respondent vide proceedings in MHS Confdl. No.33/2019 dated 12.04.2019, whereby, the detenu was ordered to be detained under the provisions of the Tamil Nadu Act 14 of 1982, branding him as a

"Goonda"



2. As per the grounds of detention, dated 12.04.2019, the detenu came under adverse notice in three adverse cases and in the ground case, which was registered in Crime No.67/2019 on the file of the Mukkudal Police Station, who is the sponsoring authority, for offence under Sections 294(b), 387, 307, 506(ii) IPC.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would focus his argument on the following two grounds:-

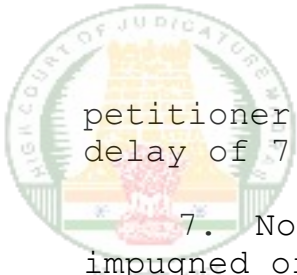
(i) There is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon'ble Supreme Court to substantiate his contentions; and

(ii) the detaining authority recorded the fact that the bail petition filed by the detenu in the ground case was pending before the Sessions Court, Tirunelveli and he has arrived at a subjective satisfaction on the ground that in a similar case, bail was granted by the same Court in CrI.M.P.No.4911/2019 dated 25.10.2017. The ground case pertains to offence under Sections 294(b), 387, 307 and 506(ii) IPC and the bail petition that has been referred to in the detention order pertains to a case, where, one Vadivel Raj @ Rajadurai was granted bail on the ground that there were no previous case against him and bail was dismissed insofar as the accused person, who had previous cases against him. Therefore, the similar order that has been referred to by the detaining authority is not similar to the facts of the present case. Therefore, there is non application of mind on the part of the detaining authority. Based on these grounds, 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 12.04.2019. As against the same, the petitioner made a representation on 25.04.2019. The remarks were received on 06.05.2019. Thereafter, the Government considered the issue and passed the order rejecting the representation on 20.05.2019. There are totally 11 days delay in representation. It is the contention of the



petitioner that excluding 4 days towards public holidays, there was delay of 7 days in considering the representation.

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

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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/detenu 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 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. 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 7 working days and the similar order that has been referred to by the detaining authority is not similar to the facts of the present case. Therefore, the impugned detention order is liable to be quashed.

12. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in MHS Confdl. No.33/2019 dated 12.04.2019 is quashed. The detenu, namely, Arulraj @ Panchattai, son of Nainar, aged about 39 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

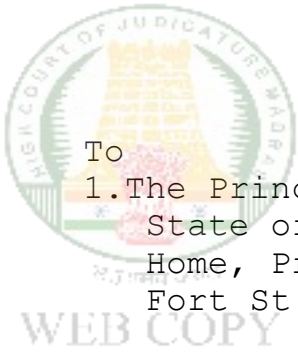
Assistant Registrar(CO)

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Sub Assistant Registrar(CS)

RR

<https://hcservices.ecourts.gov.in/hcservices/>



To

1. The Principal Secretary to Government  
State of Tamil Nadu,  
Home, Prohibition and Excise Department  
Fort St. George, Chennai.
2. The District Magistrate and District Collector,  
Office of the District Magistrate and District Collector,  
Tirunelveli District.
3. The Superintendent of Prison,  
Palayamkottai Central Prison,  
Tirunelveli District.
4. The Joint Secretary to Government,  
Public (Law and order),  
Fort st. George,  
Chennai.
5. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

Order made in  
**H.C.P. (MD) No. 366 of 2019**  
Dated: 04.10.2019

dks (CO)  
TR(23.10.2019) 4P 6C