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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.04.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and**

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.1536 of 2018

Chellappan

... Petitioner

-vs-

1.State of Tamil Nadu
Rep.by the Principal Secretary
to Government
Home, Prohibition and Excise Department
Fort. St.George, Chennai-600 009

2.The District Collector and
District Magistrate
Kanniyakumari District
Nagercoil

3.The Superintendent of Prison
Central Prison
Palayamkottai
Tirunelveli

... Respondents

PRAYER: 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 detention order passed in P.D.No.55 of 2018 dated 11.10.2018 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Chellappan, aged about 64 years, S/o.Ponnaiah Nadar, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.M.Chandrasekaran
Additional Public Prosecutor

O R D E R

[Order of the Court was made by B.PUGALENDHI, J.]

The second respondent clamped an order of detention on 11.10.2018, as against Chellappan, son of Ponnaiah Nadar, as the said Authority arrived at the subjective satisfaction that the said detenu is a 'Drug Offender' and he has to be detained under Section 3 of the Tamil Nadu Act 14 of 1982 with a view to prevent him from acting prejudicial to the interest of public health and public order.



2. Challenging the order of detention, the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.N.Pragalathan, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondents.

4. Learned counsel for the petitioner submitted that there is a delay of 11 days in considering the representation submitted by the detenu, for which, no explanation justifying the delay has been attributed by the respondents. Therefore, the delay in considering the representation vitiates the order of detention.

5. 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. The learned counsel for the petitioner further submitted that though the detenu has not filed any bail application in the ground case, however, the Detaining Authority has referred to the bail granted to similarly placed persons in other cases and held that there is a possibility of the detenu coming out on bail, which clearly shows non-application of mind and therefore, the subjective satisfaction arrived at by the detaining authority is vitiated.

7. A perusal of the materials available on record reveal that the detenu, though has not filed any bail application, the detaining authority has referred to bail applications filed by the similarly placed persons and held that there is a possibility of the detenu coming out on bail. The said finding recorded by the detaining authority clearly reveals non-application of mind on the part of the detaining authority.

8. Further, the Detention Order in question was passed on 11.10.2018. The petitioner made a representation on 23.10.2018. The remarks were received by the Government from the Detaining Authority on 15.11.2018. Thereafter, the Government considered the matter and passed the order rejecting the representation on 03.12.2018. There is no explanation for the delay of 11 days in considering the representation submitted by the detenu.

9. In ***Rekha Vs. State of Tamil Nadu***, [2011 (5) SCC 244], the 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 Supreme Court has further held that the procedural safeguards are ~~and~~ ^{and} must 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.



10. 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.

11. In **Tara Chand Vs. State of Rajasthan and others**, [1980 (2) **SCC 321**], the 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 Supreme Court as well as this Court.

12. Applying the said dictum laid down by the Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 11 working days and therefore, the impugned detention order is liable to be quashed.

13. The detention order passed by the second respondent detaining the detenu Chellappan, son of Ponnaiah Nadar, made in P.D.No.55 of 2018, dated 11.10.2018, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith unless his custody is required in any other case.

Sd/-

Assistant Registrar (AD-I)

/ True Copy /

Sub Assistant Registrar(CS)

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To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St.George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
4. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort.St.George, Chennai -9.



5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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