



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.1583 of 2018

Saravanan

... 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
Tirunelveli District, Tirunelveli

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 M.H.S.Confdl No.129/2018 dated 25.10.2018 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 Saravanan, aged about 36 years, S/o.Shunmugasundram, 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 25.10.2018, as against Saravanan, son of Shunmugasundram, as the said Authority arrived at the subjective satisfaction that the said Saravanan is a 'Madrasi' and he has to be detained under Section 3(1) of 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 and carefully perused the records.

4. 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 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 Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

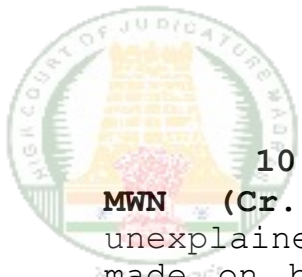
5. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, no prejudice has been 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.

6. We have considered the above submissions.

7. In this case, the Detention Order was passed on 25.10.2018. As against the same, the petitioner made a representation on 29.10.2018. The remarks were called for by the Government from the Detaining Authority on 08.11.2018. The remarks were received on 16.11.2018. Thereafter, the Government considered the issue and passed the order rejecting the representation on 03.12.2018. It is the contention of the petitioner that there was a delay of 10 days in considering the representation.

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

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 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.



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 10 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 Saravanan, son of Shunmugasundram, made in M.H.S.Confdl No.129/2018, dated 25.10.2018, 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 (CO)

// 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.
- 2.2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



5. The Joint Secretary to Government (Public),
Law & order, Fort St. George,
Chennai 9.

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TR (23.05.2019) 4P 6C