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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.04.2019
CORAM:
THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI
H.C.P. (MD) NO. 1692 OF 2018

Neelakandan ... Petitioner

-vs-

1. The Prl. Secretary to Government
   State of Tamil Nadu
   Home, Prohibition and Excise Department
   Fort. St.George, Chennai-600 009

2. The District Collector & District Magistrate
   Office of the District Collector
   and District Magistrate
   Perambalur District, Perambalur.

3. The Superintendent of Prison
   Trichy Central Prison
   Trichy. ... 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 by the 2nd respondent in Cr. M.P. No.35/2018 dated 14.11.2018 and quash the same and direct the respondents to produce the detenu or body of the detenu namely Neelakandan, S/o Kumar, aged about 23 years, now detained at Trichy Central Prison, Trichy, before this Court and set him at liberty forthwith.

For Petitioner : Mr. R.Alagumani

For Respondents : Mr.M.Chandrasekaran, APP

ORDER

(Order made by B.PUGALENDHI, J.)

The second respondent clamped an order of detention on 14.11.2018, as against Neelakandan, son of Kumar, as the said Authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' 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.R.Alagumani, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondents and carefully perused the records.

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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 14.11.2018. As against the same, the petitioner made a representation on 20.11.2018. The remarks were called for by the Government from the Detaining Authority on 27.11.2018. The remarks were received on 12.12.2018. Thereafter, the Government considered the issue and passed the order rejecting the representation on 20.12.2018. It is the contention of the petitioner that there was a delay of 18 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/detenue 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

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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 18 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 Neelakandan, S/o Kumar, made in Cr. M.P. No.35/2018 dated 14.11.2018, 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 (W)

// True Copy //

Sub Assistant Registrar(CS)

To:

1. The Prl. Secretary to Government
   State of Tamil Nadu
   Home, Prohibition and Excise Department
   Fort. St.George, Chennai-600 009

2. The District Collector & District Magistrate
   Office of the District Collector
   and District Magistrate
   Perambalur District, Perambalur.

3. The Superintendent of Prison
   Trichy Central Prison
   Trichy.

4. The Joint Secretary to Government,
   Public (Law and Order),
   Fort St.George,Chennai 9.

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

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