

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P.No.535 of 2020

Kumar

...Petitioner

Vs

1. State of Tamil Nadu,
Rep. by its Secretary to Govt.,
Home, Prohibition and Excise Dept.,
Secretariat, Chennai - 600 009.

2. The District Collector and District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus calling for the records relating to the petitioner's brother in law detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 20.02.2020 on the file of the second respondent herein made in proceedings in D.O.No.10/2020 - C2 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's brother in law namely Raja Son of Lakshmanan, aged 24 years before this Hon'ble High Court and set the petitioner's brother in law at liberty from detention, now petitioner's brother in law detained at Central Prison, Vellore.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.R.Prathap Kumar

Additional Public Prosecutor

O R D E R

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

2.The brother in law of the Detenu has filed this Petition challenging the Detention Order passed by the Second Respondent in D.O.No.10/2020 - C2 dated 20.02.2020 as he has got two adverse cases registered against him apart from the ground case.

3. Heard Mr.C.C.Chellappan, learned Counsel appearing for the Petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents.

4. It is seen from the records that the representation sent on behalf of the detenu has not been considered within time frame and there is a delay of 9 days in considering and disposing of the representation.

5. In the decision in "C.Muthuvali Vs. The Principal Secretary to Government, Home Prohibition and Excise Department, Government of Tamil Nadu, Secretariat, Chennai - 600 009" reported in "[(2017) (1) MWN (Cr.) 270 (DB)]" it has been held that an unexplained delay of nine working days on the part of the Government in considering the representation rendered the detention illegal. Another Division Bench of this Court in "Samaiah Vs. The Secretary to Government" reported in "[(2007) (4) MWN (Cr.) 145]" has held that an unexplained delay of three days in disposal of the representation made by the detenu would be sufficient to set aside the detention order.

6. Further, a larger Bench of the Supreme Court in "Rekha Vs. The State of Tamil Nadu" reported in "2011 5 SCC 244" has held that "Preventive detention is by nature repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). However, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles".

7. Since there is an unexplained delay in considering the representation submitted by the detenu, the detention order passed by the second respondent is liable to be set aside.

8. Accordingly, the detention order passed by the Second Respondent in D.O.No.10/2020 - C2 dated 20.02.2020 is quashed. The detenu, viz., Raja, S/o Lakshmanan, aged 24 years, who is now confined at Central Prison, Vellore, is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

9. On technical grounds only, the detention order has been quashed by this Court. The very purpose of detention is to prevent the detenu from repeating offences and that public safety is ensured. Since this Court has quashed the detention order, in the interest of public and in the interest of justice, this Court is justified in directing the detenu to appear before

the jurisdictional Police Station, every Monday at 11.00 A.M., till 19.02.2021. The very purpose of this direction is to ensure that the detenu does not repeat the commission of offence and that the police can also have a watch over the movement of the detenu, even if he is outside the prison. Accordingly, this petition is allowed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Govt.,
State of Tamil Nadu,
Home, Prohibition and Excise Dept.,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.
3. The Superintendent,
Central Prison, Vellore.
4. The Public Prosecutor,
High Court of Madras,
Chennai.
5. The Joint Secretary,
Public (Law and Order) Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

H.C.P.No.535 of 2020

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