

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P.No.658 of 2020

A.Rajasekar

... Petitioner

Vs

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector/District Magistrate,
Cuddalore District Collector Office,
Cuddalore.
- 3.The Superintendent of Police,
Cuddalore District,
Cuddalore.
- 4.The Superintendent,
Central Prison,
Cuddalore.
- 5.The Inspector of Police,
Vridhachalam Police Station,
Vridhachalam, Cuddalore.

... 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 on the file of the 2nd respondent in detention order Rc.No.C3/D.O/26/2020 dated 29.02.2020 and direct the respondents to produce the detainee namely Sivakumar, male aged 26 years, son of Rajasekar, now confined at Central Prison, Cuddalore before this court and quash and set aside the same and set the detainee at liberty.

For Petitioner : Mr.M.Selvam

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 father of the Detenu has filed this Petition challenging the Detention Order passed by the Second Respondent in Rc.No.C3/D.O/26/2020 dated 29.02.2020, terming him as 'Sand Offender' under the Tamil Nadu Act 14 of 1982 based on the ground case registered against him.

3.Heard Mr.M.Selvam, 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 19 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 Rc.No.C3/D.O/26/2020 dated 29.02.2020 is quashed and this Habeas Corpus Petition is allowed. The detenu viz., Sivakumar, male aged 26 years, son of Rajasekar, now confined at Central Prison, Cuddalore is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector/District Magistrate,
Cuddalore District Collector Office,
Cuddalore.
3. The Superintendent of Police,
Cuddalore District,
Cuddalore.
4. The Superintendent,
Central Prison,
Cuddalore.
5. The Inspector of Police,
Vridhachalam Police Station,
Vridhachalam, Cuddalore.
6. The Public Prosecutor,
High Court Madras 104.
7. The Joint Secretary
Public (Law and Order) Department
Secretariat
Fort St. George
Chennai - 600 009.

H.C.P.No.658 of 2020

SSD(CO)
SP(06/11/2020)