

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

H.C.P. No.747 of 2020

Indramoorthy

... Petitioner

Vs

1.The Government of Tamilnadu,
Rep. By its Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records made in Cr.M.P.No. 02/2002 dated 26.02.2020 passed by the District Magistrate and District Collector, Karur District, and quash the same as illegal and direct the respondents to produce the detenu Periasamy, son of Palaniappan, now confined at Central Prison, Trichy, before this Court and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.R.Prathap Kumar,
Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the brother-in-law of the detenu, Periasamy, son of Palaniappan, male, aged 44 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.02/2020 dated 26.02.2020, holding to be a "Sand Offender", as contemplated under Section 2(gg) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents and we have also perused the records carefully.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. 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.

5. The Detention Order in question was passed on 26.02.2020. The petitioner has made a representation on 12.03.2020 and the same was received on 16.03.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 16.03.2020. The remarks were duly received on 11.06.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 01.07.2020.

6. It is the contention of the petitioner that there was a delay of 87 days in submitting the remarks by the Detaining Authority, of which 29 days were Government Holidays and hence there was an inordinate delay of 56 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 11.06.2020 and there was delay of 19 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 6 days were Government Holidays, hence, there was inordinate delay of 13 days in considering the representation.

7. In *Rekha vs. State of Tamil Nadu* (2011 (5) SCC 244), the Honourable Supreme Court has 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 undertaken by the detenu.

8. 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 would be sufficient to set aside the order of detention.

9. In Tara Chand vs. State of Rajasthan and others, reported in 1980 (2) SCC 321, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 56 days in submitting the remarks and 13 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.02/2020, dated 26.02.2020, passed by the second respondent is set aside. The detenu, namely, Periasamy, son of Palaniappan, male, aged 44 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The District Magistrate and
District Collector,
Karur, Karur District.
- 3.The Superintendent,
Central Prison,Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (L&O) Fort St.George,Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

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