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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **30.01.2020**
CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.756 of 2019

Kalyanasundaram

... Petitioner

versus

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Office of District Collector,
Madurai.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Habeas Corpus, to call for the entire records, connected with the detention order of the respondent No.2 in B.C.D.F.G.I.S.S.S.V.No.21/2019 dated 17.07.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Kalyanasundaram, son of Packianathan, aged about 27 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner	: Dr.K.Malathi
For Respondents	: Mr.K.Dinesh Babu, Additional Public Prosecutor

ORDER

[Order of the Court was delivered by **T.RAJA, J.**]

Kalyanasundaram, aged about 27 years, son of Packianathan, has suffered the impugned detention order, dated 17.07.2019, passed by the District Collector and District Magistrate, Madurai, the second respondent herein, under Section 2(f) of the Tamil Nadu Act No.14 of 1982, branding him as "Goonda".



2. Learned counsel appearing for the petitioner made her submissions on two fold. The first point is that although three adverse cases were registered as against the detenu/petitioner herein, wherein, he was wrongly implicated as accused, the ground case has also been registered as against him in Crime No.163/19, for the offence under Sections 147, 148, 341, 294(b), 323, 324, 506(ii), 307 and 3 (1) of TNPPDL Act, altered to Sections 147, 148, 341, 294 (b), 323, 324, 506(ii), 307, 302 IPC and 3 (1) of TNPPDL Act. The second point is that in the ground case, the detenu and another person, by name, Nachiappan, have been implicated as accused. Challenging the legality of the similar detention order dated 17.07.2019 passed by the second respondent, the co-accused, Nachinappan/A3 came to this Court by way of filing H.C.P.(MD)No.724 of 2019 and this Court, by taking note of the unexplained delay of 18 days in entertaining and disposing of the representation filed by the said Nachiappan, quashed the detention order passed by the second respondent, by order dated 06.01.2020. In the present case also, there has been a delay of 17 days in considering the representations made by the detenu/petitioner that were presented on 02.08.2019 and 27.08.2019 respectively and the same were rejected on 23.09.2019 and 30.09.2019 respectively. Therefore, the present petition also deserves to be allowed.

3. Opposing the same, the learned Additional Public Prosecutor submitted that though there was a 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.

4. In this case, the Detention Order was passed on 17.07.2019. As against the same, the petitioner made two representations on 02.08.2019 and 27.08.2019 and the same have been received on 08.08.2019 and 29.08.2019 respectively and remarks were received on 20.08.2019 and 18.09.2019 respectively, but, the same have been dealt with on 19.09.2019 and 30.09.2019. Finally, rejection orders were passed on 23.09.2019 and 30.09.2019 respectively. However, there was a huge inordinate and unexplained delay of 29 days in between the period from 20.08.2019 to 19.09.2019 on the part of the Government in considering the first representation dated 02.08.2019. The copy of the proforma produced by the learned Additional Public Prosecutor shows that there are 11 intermittent Government holidays and even after excluding the holidays, there is a delay of 18 days, which is unexplained on the part of the detaining authority and hence, on the sole ground, the order of detention is liable to be interfered with.



5. In **Rekha Vs. State of Tamil Nadu**, [2011 (5) SCC 244], the Hon'ble 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 Hon'ble 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.

6. 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. In **Tara Chand Vs. State of Rajasthan and others**, [1980 (2) SCC 321], the Hon'ble 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 Hon'ble Supreme Court as well as this Court.

7. Applying the said dictum laid down by the Hon'ble 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 when the respondents have not given any valid reasons explaining the delay of seventeen days, the impugned detention order is liable to be quashed.

8. Moreover, this Court, in a similar case filed by the co-accused Nachiappan, by an order dated 06.01.2020, allowed H.C.P.(MD) No.724 of 2019, on the ground of 18 days delay in considering the representation made by him. Following the same, this petition also deserves to be allowed. Accordingly, the impugned order is quashed. Consequently, this Habeas Corpus Petition is allowed. The detenu, namely, Kalyanasundaram, aged about 27 years, S/o.Packianathan, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Office of District Collector,
Madurai.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
4. The Joint Secretary to Government,
Public(LAw &Order), Fort st. George,
Chennai 9
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.K.MALATHI, Advocate (SR-3968[F] dated 30/01/2020)

H.C.P. (MD) No.756 of 2019
30.01.2020

MK (28.02.2020) 4P 7C