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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

H.C.P. (MD)No.794 of 2019

P.Kalyanasundaram : Petitioner/Father of the Detenue

Vs.

1.State of Tamil Nadu, rep. by its
The Additional Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai-9.

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

3.The Superintendent,
Central Prison,
Tiruchirappalli. : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the records relating to the detention order passed by the 2nd respondent in Cr.M.P.No.39/2019 dated 28.07.2019 and quash the same and direct the respondents to produce the body or person of the detenu namely, Muyal Karthik alias Karthik, S/o.Kalyanasundaram aged about 21 years (now detained at Central Prison), Tiruchirappalli), before this Court and set him at liberty.

For Petitioner : Mr.N.Anandkumar

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

(Order of the Court was made by T.RAJA, J.)

The petitioner is the father of the detenu viz., Karthik @ Muyal Karthik, S/o.Kalyanasundaram, aged about 21 years. The detenu has been detained, as per the order of the second respondent, dated 28.07.2019, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "GOONDA". Challenging the same, the petititoner is before this Court in this Habeas Corpus Petition.



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

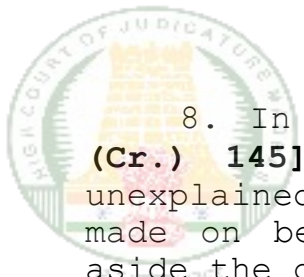
3. Learned counsel for the petitioner, assailed the impugned order, inter alia, on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered properly and seriously and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon'ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

4. Learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit 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.

5. We have considered the above submissions.

6. In this case, the Detention Order was passed on 28.07.2019. As against the same, the petitioner made a representation on 07.08.2019 and the same has been received on 09.08.2019 and on the same day, remarks were called for by the Government from the Detaining Authority. But the remarks were received only on 16.10.2019 with a delay of 67 days. For this delay, no explanation whatsoever has been furnished. Thereafter, the remarks were dealt with on 16.10.2019 and finally, rejection order was passed on 30.10.2019. Since in between the date of calling for remarks and till the date of receipt of the remarks, there was a huge inordinate and unexplained delay of 67 days on the part of the Government in considering the representation. The copy of the proforma produced by the learned Additional Public Prosecutor shows that there are intermittent Government holidays and even after excluding the holidays, there is a delay of 58 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.

7. 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.



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/detenu would be sufficient to set aside the detention order.

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9. 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.

10. 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 58 working days and when the respondents have not given any valid reasons explaining the delay of fifty eight days, the impugned detention order is liable to be quashed.

11. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Detention Order in Cr.M.P..No.39/2019 dated 28.07.2019, is quashed. The detenu, namely Karthik @ Muyal Karthik, S/o.Kalyanasundaram, aged about 21 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

RR

To

1.The Additional Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai-9.

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

3.The Superintendent of Prison
Central Prison, Tiruchirappalli.

<https://hcservices.ecourts.gov.in/hcservices/>



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

5.The Joint Secretary,
Public Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009

Order made in
H.C.P. (MD) No. 794 of 2019
Dated: 06.01.2020

JMN(17.02.2020) 4P : 6C