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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.03.2020
CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD)No.907 of 2019

V.Radha : Petitioner

Vs.

- 1.State of Tamil Nadu,
rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Pudukkottai District,
Pudukkottai.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.

: Respondents

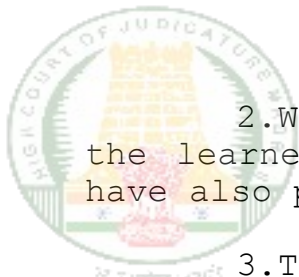
Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, to call for the entire records in detention order passed in P.D.O.No.41/2019, dated 22.08.2019 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Muneeswaran @ Ashok, S/o.Venugopal, male, aged 30 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu
For Respondents : Mr.K.Dinesh Babu,
Additional Public Prosecutor

ORDER

[Order of the Court was made by **P.N.PRAKASH, J.**]

The petitioner is the mother of the detenu viz., Muneeswaran @ Ashok, S/o.Venugopal, aged 30 years. The detenu has been detained, as per the order of the second respondent, dated 22.08.2019, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "Goonda". Challenging the same, the petitioner is before this Court with 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. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument 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 there was an inordinate and unexplained delay in receiving the remarks from the Sponsoring Authority. 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. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in receiving the remarks, 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 22.08.2019. As against the same, the petitioner made a representation on 04.09.2019 and the same was received by the Collectorate on 09.09.2019. The Parawar remarks were called for from the Sponsoring Authority on 11.09.2019. The remarks were received on 04.10.2019 and the report was sent to the Government on 06.10.2019. It is the contention of the petitioner that there was delay of 15 days in receiving the remarks from the Sponsoring Authority.

7. Now, the question is as to whether on that score, the impugned order can be quashed.

8. 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.

9. 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.



10. 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.

11. 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 15 working days and therefore, the impugned detention order is liable to be quashed.

12. In the result, this Habeas Corpus Petition is allowed by setting aside the order of detention passed by the second respondent, in P.D.O.No.41/2019, dated 22.08.2019. Consequently, the detenu, namely Muneeswaran @ Ashok, S/o.Venugopal, aged 30 years, who is now detained at Central Prison, Tiruchirappalli, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case/proceedings.

Sd/-
Assistant Registrar

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/ /2020
Sub Assistant Registrar

To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Pudukkottai District,
Pudukkottai.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4 The Joint Secretary to Government,
Public (Law & Order),
Fort St.George,
Chennai-600 009



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

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Order made in
H.C.P(MD)No.907 of 2019

Dated:
20.03.2020

sml

JM/12.05.2020/4P/6C