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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.05.2020

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

AND

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

H.C.P. (MD) No. 966 of 2019

Vinothkumar @ Vinoth

: Petitioner/Detenu

Vs.

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Virudhunagar District.

3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the entire records connected with the detention order passed in Cr.M.P.No.18 of 2019 (Goonda) dated 09.09.2019 on the file of the second respondent and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, Vinothkumar @ Vinoth, aged about 19 years, S/o. Ganesan, now detained at Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr. R. Alagumani

For Respondents : Mr. R. Anandharaj,

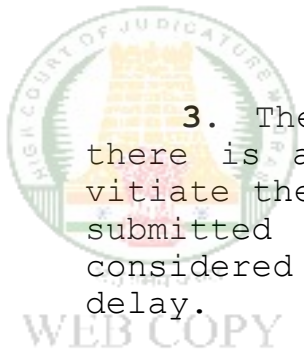
Additional Public Prosecutor

O R D E R

B. PUGALENDHI, J.,

The detenu himself is the petitioner herein and he has been detained by the second respondent vide order in Cr.M.P.No.18 of 2019 (Goonda) dated 09.09.2019. 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. We have also perused the records produced by the Detaining Authority.



3. The learned Counsel for the petitioner would submit that there is a 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 09.09.2019. The petitioner made a representation on 17.09.2019, which was received on 20.09.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 23.09.2019. The remarks were duly received on 17.10.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 29.10.2019.

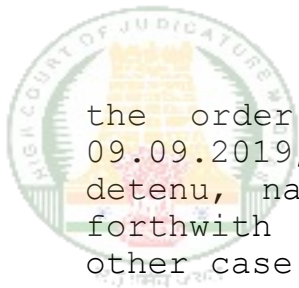
6. It is the contention of the petitioner that there was a delay of 23 days in submitting the remarks by the Detaining Authority, of which 9 days were Government Holidays and hence there was an inordinate delay of 14 days in submitting the remarks. Thereafter, there was another delay of 11 days in considering the representation, of which 5 days were Government Holidays, hence, there was another inordinate delay of 6 days in considering the representation.

7. In **Rekha vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244**, the Hon'ble 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 **Tara Chand vs. State of Rajasthan and others**, reported in **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 very detention illegal.

9. In the subject case, admittedly, there is an inordinate and unexplained delay of 14 days in submitting the remarks by the Detaining Authority and 6 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

10. In the result, the Habeas Corpus Petition is allowed and



the order of detention in Cr.M.P.No.18 of 2019(Goonda) dated 09.09.2019, passed by the second respondent is set aside. The detenu, namely, Vinothkumar @ Vinoth, is directed to be released forthwith unless his detention is required in connection with any other case.

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Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

gk

Note: Due to lock down on account of COVID-19, this order copy may be treated as true copy.

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Virudhunagar District.
- 3.The Superintendent of Prison,
Central Prison,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No. 966 of 2019
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