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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.1055 of 2019

Vijay Ganesh @ Vijay @ Kurangu Vijay

: Petitioner

Vs.

1.State of Tamil Nadu,

Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise (IX) Department,
Fort St.George, Secretariate,
Chennai - 600 009.

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

3.The Superintendent,
Central Prison,
Madurai,
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.16 of 2019 dated 31.08.2019 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, Vijay Ganesh @ Vijay @ Kurangu Vijay, aged about 26 years, S/o.Pandi, now detained at Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.A.Thiruvadi Kumar

For Respondents : Mr.R.Anandharaj,
Additional Public Prosecutor

O R D E R

P.N.PRAKASH, J. ,

The detenu himself is the petitioner herein and he has been detained by the second respondent vide order in Cr.M.P.No.16 of 2019 dated 31.08.2019. The said order is under challenge in this Habeas Corpus Petition.

<https://hccourtservices.in>



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.

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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. The learned Counsel for the petitioner has also fairly submitted that the petitioner is a life convict and his conviction by the trial Court has been confirmed by this Court in Crl.A. (MD) No. 151 of 2016.

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 31.08.2019. The petitioner made a representation on 13.09.2019, which was received on 18.09.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 19.09.2019. The remarks were duly received on 09.10.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 30.10.2019.

6. It is the contention of the petitioner that there was a delay of 19 days in submitting the remarks by the Detaining Authority, of which 9 days were Government Holidays and hence there was an inordinate delay of 10 days in submitting the remarks. Thereafter, there was another delay of 20 days in considering the representation, of which 7 days were Government Holidays, hence, there was another inordinate delay of 13 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.

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9. In the subject case, admittedly, there is an inordinate and unexplained delay of 10 days in submitting the remarks by the Detaining Authority and 13 days in considering the representation. The impugned detention order dated 31.08.2019, is, therefore, liable to be quashed and the same is, accordingly, quashed. However, in view of the fact that the petitioner is a life convict and his conviction by the trial Court has been confirmed by this Court in Crl.A.(MD)No.151 of 2016, the petitioner cannot be released on the basis of the quashment of this detention order.

10. In fine, this Habeas Corpus Petition stands disposed of.

Sd/-

Assistant Registrar(CRL SIDE)

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/ /2020

Sub Assistant Registrar(CS)

gk

To

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

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+1 CC to M/s.A.THIRUVADIKUMAR, Advocate (SR-13018[F] dated
02/06/2020)

H.C.P. (MD) No.1055 of 2019
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