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H.C.P(MD)No.1065 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2020

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.1065 of 2019

T.S.Usha

... Petitioner/Mother of the
detenu

Vs.

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

2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... 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 connected with the detention order passed in P.D.No.32/2019, dated 08.09.2019 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu i.e., the petitioner's son, namely Siva, aged about 23 years, S/o.Sivasankar @ Sivasangu, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

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

ORDER

[Order of the Court was made by **B.PUGALENDHI, J.**]

The petitioner is the mother of the detenu viz., Siva, S/o.Sivasankar @ Sivasanku, aged about 23 years. The detenu has been detained, as per the order of the second respondent, dated 08.09.2019, under Section 2(f) of the Tamil Nadu Act 14 of 1982,

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branding him as "Goonda". Challenging the same, the petitioner 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. 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 the representation made by the petitioner was not considered on time 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.

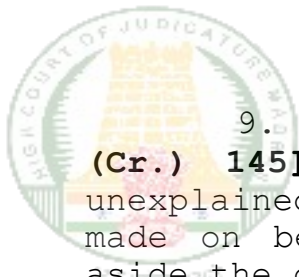
4. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, no prejudice has been 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 08.09.2019. As against the same, the petitioner made a representation on 04.10.2019. The remarks were called for by the Government from the Detaining Authority on 16.10.2019. The remarks were received on 08.11.2019. Thereafter, the Government considered the issue and passed the order rejecting the representation on 29.11.2019. It is the contention of the petitioner that there was delay of 12 days in considering the representation.

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

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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 12 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.No.32/2019, dated 08.09.2019. Consequently, the detenu, namely, Siva, S/o.Sivasankar @ Sivasanku, aged about 23 years, who is now detained at Central Prison, Palayamkottai, 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 (AS)

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/ /2020

Sub Assistant Registrar(CS)

SML/RSB

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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

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



2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

4.The Joint Secretary to Government of Tamil Nadu,Public(L&O),
Fort St. George,
Chennai-600 009.

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

Order made in
H.C.P(MD)No.1065 of 2019

Dated:

05.06.2020

AP(16/06/2020) 4P 6C