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H.C.P(MD)No.1091 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2020

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD) No.1091 of 2019

Senthilkumar @ Undiyal Senthil

... 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 Commissioner of Police,
Office of the Commissioner of Police,
Madurai City,
Madurai.

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

... 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 of the second respondent in No.68/BCDFGISSSV/2019, dated 21.09.2019 and quash the same and direct the respondents to produce the body or person of the detenu, by name Senthilkumar @ Undiyal Senthil, Son of Vairavasundaram, aged about 27 years, now confining as "Goonda" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner	:	Mr.R.Alagumani
For Respondents	:	Mr.R.Anandharaj
		Additional Public Prosecutor

ORDER

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

The petitioner is the detenu viz., Senthilkumar @ Undiyal Senthil, Son of Vairavasundaram, aged about 27 years. The detenu has been detained, as per the order of the second respondent, dated 21.09.2019, 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 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.

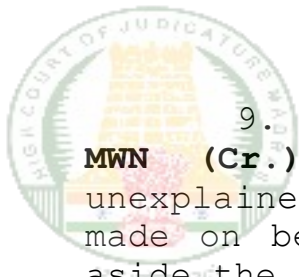
4. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, no prejudice has been 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 21.09.2019. As against the same, the petitioner made a representation dated 05.10.2019. The remarks were called for by the Government from the Detaining Authority and the same was received on 16.10.2019. Thereafter, the Government considered the issue and passed the order rejecting the representation on 30.10.2019. It is the contention of the petitioner that there was delay of 6 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. In this case, the detention order was passed on 21.09.2019 and there is a delay of 6 working days in considering the representation. Under normal circumstances, this may not be a ground for quashing the detention order, however, taking into consideration the present COVID-19 pandemic situation and the consequent need for decongestion of prisoners, this Court is inclined to quash the detention order. That apart, in respect of the co-accused, who was already detained under the Tamil Nadu Act 14 of 1982, the detention order has been quashed by this Court in H.C.P.(MD)No.1086 of 2019, dated 19.02.2020.

12. In the result, this Habeas Corpus Petition is allowed by setting aside the order of detention passed by the second respondent in No.68/BCDFGISSSV/2019, dated 21.09.2019. Consequently, the detenu, namely, Senthilkumar @ Undiyal Senthil, Son of Vairavasundaram, aged about 27 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 (CS-II)

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Sub Assistant Registrar(CS)

SML

To

1.The Principal 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 Commissioner of Police,
Office of the Commissioner of Police,
Madurai City,
Madurai.

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

4.The Joint Secretary to Government of Tamil Nadu,
Prohibition and Excise , Chennai-9.

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

Order made in
H.C.P (MD)No.1091 of 2019

Dated:
25.06.2020

KM (08.07.2020) 4P 6C