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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2021

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

H.C.P.No.424 of 2021

Senbagathai
W/o.Suriyan

.. Petitioner

Vs.

1.The Secretary to Government,
Government of Tamil Nadu (Home)
Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai - 7.

3.The Superintendent,
Central Prison, Puzhal,
Chennai - 66.

4.The Inspector of Police,
T-1 Ambattur Police Station,
Chennai.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus calling for the records relating to the impugned order No.473/BCDFGISSSV/2020 dated 20.11.2020 on the file of second respondent herein and set aside the same as illegal and direct the respondents to produce the detenu viz., Kalidass @ Kali S/o.Suriyan, aged about 25 years, now confined at Central Prison, Puzhal, Chennai - 66, before this Court and set him at liberty.

For Petitioner : Mr.G.Vinodh Kumar

For Respondents: Mr.R.Muniyapparaj
Government Advocate [Crl.side]



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

2. We have heard the learned counsel appearing for the petitioner and the learned Government Advocate [Cr1.side] appearing for the respondents. We have also perused the records produced by the Detaining Authority.

4. The learned Government Advocate [Crl.side] strongly opposed the Habeas Corpus Petition by filing his counter. 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 Government Advocate [Crl.side], 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.

6. It is the contention of the petitioner that there was a delay of 4 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence, there was an inordinate delay of 2 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 17.02.2021 and there was a delay of 8 days in considering the representation by the Hon'ble Minister



for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 2 days were Government Holidays. Hence, there was inordinate delay of 8 days in considering the representation.

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7. In *Rekha vs. State of Tamil Nadu* (2011 (5) SCC 244), the Honourable 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 *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 would be sufficient to set aside the order of detention.

9. In *Tara Chand vs. State of Rajasthan and others*, reported in 1980 (2) SCC 321, the Honourable 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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 2 days in submitting the remarks by the Detaining Authority and unexplained delay of 6 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed.

In the result, the Habeas Corpus Petition is allowed and the order of detention in No.473/BCDFGISSSV/2020 dated 20.11.2020 passed by the second respondent is set aside. The detenu, viz., Kalidass @ Kali S/o.Suriyan, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

gm

To

1.The Secretary to Government,
Government of Tamil Nadu (Home)
Prohibition and Excise Department,
Fort St.George, Chennai - 9.



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- 2.The Commissioner of Police,
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Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai - 7.
- 3.The Superintendent,
Central Prison, Puzhal,
Chennai - 66.
- 4.The Inspector of Police,
T-1 Ambattur Police Station,
Chennai.
- 5.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.
- 6.The Public Prosecutor,
High Court, Madras.

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SR II(CO)
GN(19/07/2021)