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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2021

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MS. JUSTICE R.N.MANJULA

H.C.P.No.595 of 2021

Kamalakannan
S/o.Moorthy

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
represented by its Secretary,
Department of Home, Prohibition and Excise,
Fort St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Thirupathur,
Thirupathur District.
- 3.The Superintendent of Police,
Thirupathur,
Thirupathur District.
- 4.The Inspector of Police,
Thirupathur Town Police Station,
Thirupathur District.
- 5.The Superintendent,
Central Prison,
Vellore, Vellore District.

.. 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 made in C3/D.O.No.18/2021 dated 25.03.2021 on the file of second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Prabhu @ Prabhakaran S/o.Sankar, aged 30 years, now confined at Central Prison, Vellore, before this Court and set him at liberty.



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For Petitioner : Mr.R.Sankarasubbu
For Respondents: Mr.R.Muniyapparaj
Government Advocate [crl.side]

ORDER

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

The date of detention of the detenu, in this case, is 25.03.2021. Under normal circumstances, we would not have taken up this case. However, in this case, the detenu Prabhu @ Prabhakaran, his brother Sheik @ Aravindan and their father Sankar were arrested in Crime No.446 of 2016 for the offences u/s.294(b), 324 and 307 IPC. They were all arrested on 15.02.2021 and were detained under Act 14/1982. While so, Sankar died on 28.05.2021 in CMC hospital, due to Covid-19. His sons viz., Sheik @ Aravindan and Prabhu @ Prabhakaran applied for emergency leave u/s.15 of Act 14 of 1982 to attend their father's funeral. However, their leave application were rejected. Under such circumstances, we are inclined to take up the present petition for disposal.

2. The petitioner is the brother-in-law of the detenu viz., Prabhu @ Prabhakaran S/o.Sankar, aged 30 years. The detenu has been detained by the second respondent by his order in C3/D.O.No.18/2021 dated 25.03.2021, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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

4. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is 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.

5. 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.

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6. The Detention Order in question was passed on 25.03.2021. The petitioner made a representation dated Nil. Thereafter, remarks were called for by the Government from the Detaining Authority on 12.05.2021. The remarks were duly received on 27.05.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.07.2021.

7. It is the contention of the petitioner that there was a delay of 14 days in submitting the remarks by the Detaining Authority, of which 5 days were Government holidays and hence, there was a delay 9 days in submitting the remarks by the Detaining Authority. It is the further contention of the petitioner that the remarks were received on 27.05.2021 and there was a delay of 2 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 1 day was a Government Holiday. Hence, there was inordinate delay of 10 days in considering the representation.

8. 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.

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 would be sufficient to set aside the order of detention.

10. 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.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 9 days in submitting the remarks by the Detaining Authority and unexplained delay of 1 day 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 C3/D.O.No.18/2021 dated 25.03.2021 passed by the second respondent is set aside. The detenu, viz., Prabhu @ Prabhakaran S/o.Sankar, aged 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

gm

To

- 1.The Secretary,
Department of Home, Prohibition and Excise,
Fort St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Thirupathur,
Thirupathur District.
- 3.The Superintendent of Police,
Thirupathur,
Thirupathur District.
- 4.The Inspector of Police,
Thirupathur Town Police Station,
Thirupathur District.
- 5.The Superintendent,
Central Prison,
Vellore, Vellore District.
- 6.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.
- 7.The Public Prosecutor,
High Court, Madras.

H.C.P.No.595 of 2021

KJ(CO)
GMY(17/08/2021)