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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

CORAM

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

H.C.P.NO.616 OF 2021

Logeswaran @ Kuttasakku ... Petitioner/Detenue

.Vs.

1. The State represented by its
   The Principal Secretary to Government,
   Home, Prohibition & Excise Department,
   Secretariat, Chennai - 600 009.

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

3. The Superintendent of Police,
   Office of the Superintendent of Police,
   Erode District.

4. The Superintendent of Prison,
   Office of the Superintendent of Prison,
   Central Prison at Salem.

5. The Inspector of Police,
   Erode North Police Station,
   Erode. ... Respondents

PRAYER:-

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the entire records connected with the detention order of the second respondent in CMP No.15/Goonda/2021/C1 dated 16.03.2021 and quash the same and direct the respondents to produce the petitioner viz., Logeswaran @ Kuttasakku s/o.Ambedkar, aged about 23 years, now confined at Central Prison, Salem, before this Court and set him at liberty forthwith.

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For Petitioner : Mr.M.Mohamed Saifulla

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Order of the Court was made by R.N.MANJULA, J]

The petitioner/detenu viz., Logeswaran @ Kuttasakku S/o.Ambedkar, aged about 23 years, has been detained by the second respondent by his order in CMP No.15/Goonda/2021/C1 dated 16.03.2021, holding him to be a "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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.

3. 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.

4. The learned Additional Public Prosecutor strongly 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 16.03.2021. The petitioner made a representation dated 13.03.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 19.04.2021. The remarks were duly received on 06.05.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 07.06.2021.

6. It is the contention of the petitioner that there was a delay of 16 days in submitting the remarks by the Detaining Authority, of which 4 days were Government holidays and hence,

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there was a delay of 12 days in submitting the remarks by the Detaining Authority. It is the further contention of the petitioner that the remarks were received on 06.05.2021 and there was a delay of 3 days in considering the representation by the Hon'ble Minister for Electricity, P&E, after the Deputy Secretary dealt with it, of which 1 day was a Government holiday. Hence, there was inordinate delay of 2 days in considering the representation.

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 12 days in submitting the remarks by the Detaining Authority and unexplained delay of 2 days in considering the representation by the Hon'ble Minister for Electricity, P&E. 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 CMP No.15/Goonda/2021/C1 dated 16.03.2021 passed by the second respondent is set aside. The detenu, viz., Logeswaran @ Kuttasakku s/o.Ambedkar, aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

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To

1. The Principal Secretary to Government,
   Home, Prohibition & Excise Department,
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4. The Superintendent of Prison,
   Office of the Superintendent of Prison,
   Central Prison at Salem.

5. The Inspector of Police,
   Erode North Police Station,
   Erode.

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.616 OF 2021

MG(CO)
PBS/30/09/2021

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