

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2021

Coram

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and**

THE HONOURABLE MS. JUSTICE R.N.MANJULA

H.C.P.No.678 of 2021

M.Logesh
S/o.Saminathan

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 2.The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.
- 3.The Superintendent of Police,
Kancheepuram District,
Kancheepuram.
- 4.The Superintendent of Prison,
Central Prison – II,
Puzhal, Chennai – 600 066.

5.The Inspector of Police,
Baluchettychatram Police Station,
Kancheepuram 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 entire records leading to the detention of the petitioner's cousin Logesh s/o.Subramani, aged about 24 years, who is presently lodged at Central Prison, Puzhal II, Chennai – 600 066 and has been detained under Act 14/82 as a “Drug Offender” vide detention order dated 28.03.2021 on the file of the second respondent herein, made in BCDFGISSSV No.08/2021 and quash the same and consequently, direct the respondents herein to produce the body and person of the said detenu before this Court and set him at liberty.

For Petitioner : Mr.M.Rajavelu

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the cousin of the detenu viz., Logesh s/o.Subramani, aged about 24 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.08/2021 dated 28.03.2021, holding him to be a "Drug Offender", as contemplated under Section 2(e) 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 28.03.2021. The petitioner made a representation dated 19.04.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 21.04.2021. The remarks were duly received on 20.05.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.07.2021.

6. It is the contention of the petitioner that there was a delay of 28 days in submitting the remarks by the Detaining Authority, of which 9 days were Government holidays and hence, there was a delay of 19 days in submitting the remarks by the Detaining Authority. It is the further contention of the petitioner that the remarks were received on 20.05.2021 and there was a delay of 65 days in considering the representation by the Hon'ble Minister for Electricity, P&E, after the Deputy Secretary dealt with

it, of which 21 days were Government holidays. Hence, there was inordinate delay of 63 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 19 days in submitting the remarks by the Detaining Authority and unexplained delay of 44 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 BCDFGISSSV No.08/2021 dated 28.03.2021 passed by the second respondent is set aside. The detenu, viz., Logesh s/o.Subramani, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[P.N.P., J]

[R.N.M., J]

20.09.2021

Index: Yes/No
gm

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 2.The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.
- 3.The Superintendent of Police,
Kancheepuram District,
Kancheepuram.
- 4.The Superintendent of Prison,
Central Prison – II,
Puzhal, Chennai – 600 066.
- 5.The Inspector of Police,
Baluchettychatram Police Station,
Kancheepuram 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.

WEB COPY

P.N.PRAKASH, J
and
R.N.MANJULA, J

gm



H.C.P.No.678 of 2021

WEB COPY

20.09.2021