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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.NO.952 OF 2021

Paulsamy @ Balraj @ Balu

... Petitioner/Detenuue

Vs.

1. The Secretary to Government of Tamilnadu,
Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Magistrate & District Collector,
Thiruvallur District,
Thiruvallur.
3. The Inspector of Police,
Thiruvallur Taluk Police Station,
Thiruvallur District.
4. The Superintendent of Police,
Thiruvallur District.
5. The Superintendent of Police,
Central Prison,
Puzhal, Chennai.

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records of the detention order made in BCDFGIISSSV No.66/2021 dated 07.05.2021 passed by the District Magistrate and District Collector, Thiruvallur District, Thiruvallur , the second respondent herein and set aside the same and direct the respondents to produce the detenuue before the Hon'ble Court and set the detenuue John, S/o. Paulsamy @ Balraj @ Balu, aged 28 years, now confined at Centrla Prison, Puzhal, Chennai at liberty.



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For petitioner : Mr. N. Sudharsan

For respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

O R D E R

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

The petitioner is the father of the detenu. The detenu has been detained by the 2nd respondent by his order dated 07.05.2021 in BCDFGISSSV No.66/2021, 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 07.05.2021. The petitioner made a representation on 08.06.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 14.06.2021. The remarks were duly received on 07.07.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 09.08.2021.

6. It is the contention of the petitioner that there was a delay of 23 days in submitting the remarks by the Detaining



Authority, of which 6 days were Government Holidays and hence, there was a delay of 17 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 07.07.2021 and there was a delay of 3 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which there was no Government Holiday, hence, there was a delay of 3 days in considering the representation.

7. In Rekha Vs. State of Tamil Nadu [2011 (5) SCC 244], the Hon'ble 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 Hon'ble 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 17 days in submitting the remarks by the Detaining Authority and an unexplained delay of 3 days in considering the representation by the Hon'ble Minister for Home, 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 BCDFGISSSV No.66/2021 dated 07.05.2021, passed by the 2nd respondent is set aside. The detenu John, aged 28 years, S/o. Paulsamy @ Balraj @ Balu, is directed to be released forthwith, unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of Tamilnadu,
Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Magistrate & District Collector,
Thiruvallur District,
Thiruvallur.
3. The Inspector of Police,
Thiruvallur Taluk Police Station,
Thiruvallur District.
4. The Superintendent of Police,
Thiruvallur District.
5. The Superintendent of Police,
Central Prison,
Puzhal, Chennai.
6. The Joint Secretary to Government,
Public, Law and Order Department,
Secretariat,
Chennai - 600 009.
7. The Public Prosecutor,
High Court, Madras.

H.C.P.NO.952 OF 2021

GPL(CO)
PBS/29/11/2021