



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2021

CORAM

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

H.C.P.NO.1034 OF 2021

Bava Jan

... Petitioner/
Father of Detenue

.Vs.

- 1 The State of Tamil Nadu represented by
the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Secretariat, Chennai 600 009
 - 2 The Commissioner of Police
Greater Chennai,
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai 600 007
 - 3 The Superintendent of Prisons
Central Prison,
Puzhal, Chennai 600 066
 - 4 The Inspector of Police
Team 14, Cyber Crime Cell
Chennai Crime Branch
Vepery, Chennai 600 007
- ... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS calling for the records of the detention order No.99/BCDFGISSSV/2021 dated 09.04.2021 on the file of the second respondent herein and quash the same and direct the respondents to produce the body of the detenu Syed Ali Hussain, S/o.Bava Jan, Muslim, aged about 40 years, who is now confined in the Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For petitioner : Mr.I.Abdul Basith

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 viz., Syed Ali Hussain, S/o.Bava Jan, aged about 40 years. The detenu has been detained by the 2nd respondent by his order dated 09.04.2021 in No.99/BCDFGISSSV/2021, holding him to be a "Cyber Law Offender", as contemplated under Section 3(1) of 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 09.04.2021. The petitioner made a representation on 04.05.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 04.05.2021. The remarks were duly received on 11.05.2021. 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 7 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence, there was a delay of 5 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 11.05.2021 and there was an inordinate delay of 25 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 8 days were Government Holidays, hence, there was a delay of 17 day 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 a delay of 5 days in submitting the remarks by the Detaining Authority and an inordinate and unexplained delay of 17 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 No.99/BCDFGISSSV/2021, dated 09.04.2021, passed by the 2nd respondent is set aside. The detenu viz., Syed Ali Hussain, S/o.Bava Jan, aged about 40 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Government of Tamil Nadu, Fort St. George
Secretariat, Chennai 600 009



2. The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai - 600 009
3. The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
(Goondas Section)
Vepery, Chennai - 600 007
4. The Superintendent of Prisons
Central Prison
Puzhal, Chennai - 600 066
5. The Inspector of Police
Team 14, Cyber Crime Cell
Chennai Crime Branch
Vepery, Chennai - 600 007
6. The Public Prosecutor
High Court, Madras.

+1cc to M/s.I.Abdul Basith, Advocate, S.R.No.58373

H.C.P.No.1034 of 2021

MG(CO)
CS/16/11/2021