

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2021

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

H.C.P.No.2257 of 2020

Ganesan
S/o.Ponnusamy

.. Petitioner

Vs.

1.State of Tamil Nadu
represented by its
Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600009.

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

3.The Superintendent of Police,
Villupuram District.

4.The Superintendent of Prison,
Cuddalore Central Prison,
Cuddalore District.

5.The Inspector of Police,
NIB CID Unit,
Villupuram 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, connected with the detention order of the second respondent in Rc.No.C2/21642/2020 dated 30.09.2020 and quash the same and direct the respondents to produce the body or person of the detenu by name Prabakaran

S/o.Ponnusamy, aged about 33 years, now detained 'Drug Offender' at Cuddalore Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents: Mr.R.Muniyapparaj
Government Advocate [Crl.side]

ORDER

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

The petitioner is the brother of the detenu viz., Prabakaran, aged about 33 years, son of Ponnusamy. The detenu has been detained by the second respondent by his order in Rc.No.C2/21642/2020 dated 30.09.2020, holding him to be a "Drug Offender", as contemplated under Section 2(e) 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 Government Advocate [Crl.side] 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 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.

5. The Detention Order in question was passed on 30.09.2020. The petitioner made a representation on 27.10.2020. Thereafter, remarks were called for by the Government from the

Detaining Authority on 02.11.2020. The remarks were duly received on 21.11.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 27.11.2020.

6. It is the contention of the petitioner that there was a delay of 17 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holiday and hence there was an inordinate delay of 15 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 21.11.2020 and there was a delay of 3 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 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 15 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, 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 Rc.No.C2/21642/2020 dated 30.09.2020, passed by the second respondent is set aside. The detenu, viz., Prabakaran, aged about 33 years, son of Ponnusamy, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gm
To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and
District Magistrate,
Villupuram District, Villupuram.
- 3.The Superintendent of Police,
Villupuram District.
- 4.The Superintendent of Prison,
Cuddalore Central Prison,
Cuddalore District.
- 5.The Inspector of Police,
NIB CID Unit,
Villupuram District.
- 6.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.
- 7.The Public Prosecutor,
High Court, Madras.

SV(CO)
A.SK(12.07.2021)

H.C.P.No.2257 of 2020