

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice R.PONGIAPPAN

H.C.P.No.2237 of 2020

M.Rajamanickam

.. Petitioner

Vs.

- 1.State of Tamil Nadu,
Represented by its Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Ariyalur District, Ariyalur.
- 3.The Superintendent of Police,
Office of the Superintendent,
Ariyalur District, Ariyalur.
- 4.The Inspector of Police,
Jayankondam Police Station,
Ariyalur District.
- 5.The Superintendent of Prison,
Central Prison,
Tiruchirapalli.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records in Cr.M.P.No.79/2020 dated 03.11.2020 on the file of the second respondent herein and set aside the same as illegal and produce the detenu Vinith @ Vinithkumar, son of Rajamanickam, aged about 20 years, who is confined at Central Prison, Tiruchirapalli, before this Court and set him at liberty forthwith.

For Petitioner : Mr.Ilayaraja Kandasamy
For Respondents : Mr.J.C.Durairaj
Govt. Advocate
(Crl.Side)

ORDER

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

The petitioner is the father of the detenu viz., Vinith @ Vinithkumar, son of Rajamanickam, aged about 20 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.79/2020 dated 03.11.2020, holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) 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 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 03.11.2020. The petitioner made a representation on 23.11.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 27.11.2020. The remarks were duly received on 22.12.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 11.01.2021.

6. It is the contention of the petitioner that there was a delay of 25 days in submitting the remarks by the Detaining Authority, of which 8 days were Government Holiday and hence there was an inordinate delay of 17 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 22.12.2020 and there was a delay of 18 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 7 days were Government Holidays, hence, there was inordinate delay of 11 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 17 days in submitting the remarks by the Detaining Authority and unexplained delay of 11 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 Cr.M.P.No.79/2020 dated 03.11.2020, passed by the second respondent is set aside. The detenu, viz., Vinith @ Vinithkumar, son of Rajamanickam, aged about 20 years, 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

nsd
To

- 1.The Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Ariyalur District, Ariyalur.
- 3.The Superintendent of Police,
Office of the Superintendent,
Ariyalur District, Ariyalur.
- 4.The Inspector of Police,
Jayankondam Police Station,
Ariyalur District.
- 5.The Superintendent of Prison,
Central Prison,
Tiruchirapalli.
- 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.2237 of 2020

RP(CO)
A.SK(17.06.2021)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the central emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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