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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2021

Coram

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

H.C.P.No.2592 of 2020

Porkillai

.. Petitioner

Vs.

State represented by

1.The Secretary to Government,
Government of India,
Ministry of Home Affairs,
(Department of Internal Security),
North Block, New Delhi - 110001.

2.The Additional Secretary to Government,
(Home) Government of Pudhucherry,
Chief Secretariat, Gubert Avenue,
Pudhucherry - 605 001.

3.The District Magistrate-cum-Authorised Officer,
1st Floor, Vazhadvavoor Road,
Kavundanpalayam, Pudhucherry - 605 009.

4.The Senior Superintendent of Police (L & O),
Pudhucherry.

5.The Chief Superintendent of Prison,
Central Prison,
Kalapet, Pudhucherry.

6.The Inspector of Police,
Uralaiyanpettai Police Station,
Pudhucherry.

.. 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 No.18/DM/RO/D2/PPASAA/2020 dated 02.12.2020 on the file of the 3rd respondent and quash the same as illegal and direct the respondent to produce the detenu Siva @ Kutti Siva, son of Joseph, aged about 31 years, now confined at Central Prison, Kalapet, Pudhucherry, before this Court and set him at liberty forthwith.



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For Petitioner : Mr.T.Elumalai

For Respondents : Mr.Balamurugane
Public Prosecutor
(Puducherry)

ORDER

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

The petitioner is the wife of the detenu Siva @ Kutti Siva, son of Joseph, aged about 31 years. The detenu has been detained by the third respondent by his order in No.18/DM/RO/D2/PPASAA/2020 dated 02.12.2020, holding him to be a "Dangerous Person", as contemplated under Section 3(1) of the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010). 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 Public Prosecutor (Puducherry) 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 Public Prosecutor (Puducherry) 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 Public Prosecutor (Puducherry), 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 02.12.2020. The petitioner has made a representation on 11.12.2020 and the same was received on 15.12.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 13.01.2021.

6. It is the contention of the petitioner that there was a delay of 29 days in considering the representation by the



Government, of which 10 days were Government Holidays and hence there was an inordinate delay of 19 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 considering the representation. 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.18/DM/RO/D2/PPASAA/2020 dated 02.12.2020, passed by the third respondent is set aside. The detenu, viz., Siva @ Kutti Siva, son of Joseph, aged about 31 years, is directed to be released forthwith unless his detention is required in connection with any other case.

nsd

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar



To

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(Department of Internal Security),
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5. The Chief Superintendent of Prison,
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Kalapet, Pudhucherry.
6. The Inspector of Police,
Uralaiyanpettai Police Station,
Pudhucherry.
7. The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.
8. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr. T. Elumalai, Advocate Sr.32776

H.C.P.No.2592 of 2020

AK-II(CO)
EU 15.7.2021