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H.C.P.(MD) No.561 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :15.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.561 of 2021

Subashkannan

... Petitioner

-vs-

1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Tenkasi District,
Tenkasi.

3.The Superintendent of Prison,
Central Prison,
Palaymkottai,
Tirunelveli.

... Respondents

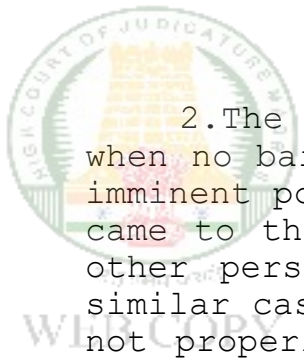
PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in M.H.S.Confdl No.09/2021 dated 16.02.2021 on the file of the second respondent herein and quash the same and direct the respondents and direct the respondents to produce the detenu or body of the detenu namely Subashkannan, aged about 23 years, S/o.Karuppasamy, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner	: Mr.N.Pragalathan
For Respondents	: Mr.A.Thiruvadi Kumar
	Standing Counsel for State (Crl. Side)

O R D E R

(Order of the Court was made by J.NISHA BANU, J.)

This Habeas Corpus Petition has been filed by the detenu, namely, Subashkannan, S/o.Karuppasamy, aged about 23 years, challenging the detention order in M.H.S.Confdl No.09/2021 dated 16.02.2021, passed by the second respondent, branding him as "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.



2.The learned counsel for the petitioner would state that when no bail application is pending in the remand case, there is no imminent possibility of release on bail, but the detaining authority came to the subjective satisfaction relying a bail granted to some other person. The documents relied by the detaining authority as similar case is no way similar to the detenu's case. The arrest was not properly intimated to the relatives or friends of the detenu. Several pages in the booklet are in English and therefore, the detenu was not able to understand and make effective representation. The detaining authority pre-judged the future activities of the detenu that, if he comes out on bail, the detenu will indulge in such future activities, which will be prejudicial to the maintenance of public order. The Tamil and English version of the grounds of detention and booklet differs and therefore, the detenu was not able to effectively represent the case before the advisory board. The booklets are illegible and therefore, the detenu cannot understand the said pages and prefer effective representation and there is an inordinate delay in considering the petitioner's representation.

3.Even though the petitioner has raised the above grounds to quash the impugned detention order, the learned counsel for the petitioner would mainly place arguments on the ground of delay in disposal of the petitioner's representation. In this regard, the learned counsel for the petitioner would state that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India have not been followed in this case and there is unexplained and inordinate delay in disposal of the petitioner's representation which would vitiate the impugned order of detention. Thus, he would pray to quash the impugned order of detention.

4.The learned Standing Counsel appearing for the respondents would state that after satisfying with the materials placed by the sponsoring authority, the detaining authority has passed the impugned detention order and therefore, there is no infirmity or illegality in the same. He would produce the proforma regarding the disposal of the petitioner's representation and would state that even if there is any delay in disposal of the petitioner's representation, it has not caused any prejudice to the rights of the detenu. Thus, he would pray for dismissal of this petition.

5.Heard the learned counsel for the petitioner as well as the respondents.

6.Perusal of the proforma produced by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner has made a representation to the 1st respondent on 01.04.2021, which was received on 08.04.2021. Remarks on the said representation were called for on 08.04.2021 and it was received on 11.05.2021. The Deputy Secretary concerned has dealt with the representation on 11.05.2021 and the



15.05.2021 and finally, the representation came to be rejected on 07.06.2021. It is seen that in between 08.04.2021 and 11.05.2021, there was a delay of 32 days. After excluding the government holidays of 14 days, there was a delay of 18 days in considering the petitioner's representation.

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7. At this juncture, it is useful to refer to the decision of the Hon'ble Supreme Court in the case of **Rajammal vs. State of Tamil Nadu and another** reported in **1999 (1) CC 417**, wherein, the Apex Court has held that it is for the authority concerned to explain the delay, if any, in disposal of the representation of the detenu and if any delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

8. In the case on hand, as stated supra, the delay of 18 days in considering the representation of the petitioner remains unexplained by the respondents. Hence, in our considered view, the impugned detention order is liable to be set aside solely on the ground of delay by following the above decision of the Apex Court.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in M.H.S.Confdl No.09/2021 dated 16.02.2021, passed by the second respondent, is set aside. Consequently, the detenu, namely, Subashkannan, S/o.Karuppasamy, aged about 23 years, who is now detained at Central Prison, Palayamkottai, is directed to be released forthwith, unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Joint Secretary to Government of TamilNadu,
Public (Law & Order),
Fort Saint Geroge,
Chennai-9.

3.The District Collector and District Magistrate,
Tenkasi District,
Tenkasi.

4.The Superintendent of Prison,
Central Prison,
Palaymkottai,
Tirunelveli.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
H.C.P. (MD) No.561 of 2021
15.09.2021

_RS (27.09.2021) 4P 6C