



WEB COPY



Order dated : 13.10.2022

HCP No.132 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

and

THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

H.C.P.No.132 of 2022

P.Senthil

F/o.S.Nagaraj

... Petitioner

Vs.

1.State of Tamil Nadu

represented by

The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The District Collector & District Magistrate,
Coimbatore, Coimbatore District.

3.The Superintendent of Prison,
Central Prison - Coimbatore,
Coimbatore District.

4.The Superintendent of Police,
Coimbatore District.

5.The Inspector of Police,
All Women Police Station,
Pollachi, Coimbatore District.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus calling for the entire records pertaining to the detention order passed by the second respondent in Cr.M.P.No.37/S.O/2021/E1 dated 25.10.2021 and set aside the same and direct the respondents to produce my son, namely, Nagaraj s/o.Senthil, aged about 19 years, who is now confined in Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.M.Pandian
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by **P.N.PRAKASH, J.**]

By order dated 15.07.2022, this Court had directed the Superintendent of Police, Coimbatore (Rural), to take appropriate action against the Inspector of Police, All Women Police Station, Pollachi, Coimbatore District, for not appearing before this Court with the CD files of this case.

2. Today, Mr.R.Kopperundevi, Inspector of Police, All Women Police Station, Pollachi [Mobile No.: 94981 74975], is present.



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3. The Inspector of Police, All Women Police Station, has filed an apology affidavit dated 05.09.2022 wherein she has stated that she suffered a fracture in her right foot on 12.07.2022 and therefore, she was unable to be present before this court on 15.07.2022. Along with the apology affidavit, she has also filed her medical records to show that she suffered a fracture. Her apology affidavit is accepted and further action against her shall stand dropped.

4. The petitioner is the father of the detenu, Nagaraj s/o.Senthil, aged about 19 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.37/S.O/2021/E1 dated 25.10.2021, 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.

5. We have heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondents. We have also perused the records produced by the Detaining Authority.



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6. 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.

7. 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.

8. The Detention Order in question was passed on 25.10.2021. The petitioner made a representation dated 24.01.2022. Thereafter, remarks were



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called for by the Government from the Detaining Authority on 04.02.2022.

The remarks were duly received on 15.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 18.04.2022.

9. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining Authority, of which 4 days were Government holidays and hence, there was an inordinate delay of 6 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 15.02.2022 and there was a delay of 61 days in considering the representation by the Hon'ble Minister for Home, P&E after the Deputy Secretary dealt with it, of which 20 days were Government holidays. Hence, there was inordinate delay of 47 days in considering the representation.

10. 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



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rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

11. 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.

12. 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.

13. In the subject case, admittedly, there is an inordinate and unexplained delay of 6 days in submitting the remarks by the Detaining Authority and unexplained delay of 41 days in considering the representation by the Hon'ble Minister for Home, P&E. The impugned detention order is, therefore, liable to be quashed.



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In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.37/S.O/2021/E1 dated 25.10.2021, passed by the second respondent is set aside. The detenu, viz., Nagaraj s/o.Senthil, aged about 19 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[PNP, J.] [TKR, J.]
13.10.2022

Index: Yes/No
gm

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector & District Magistrate,
Coimbatore, Coimbatore District.
- 3.The Superintendent of Prison,
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gm

6.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai – 9.

7.The Public Prosecutor,
High Court, Madras.

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