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H.C.P.No.237 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2022

Coram

The Honourable Mr. Justice **S.VAIDYANATHAN**
and
The Honourable Mr. Justice **A.D.JAGADISH CHANDIRA**

H.C.P.No.237 of 2022

Varun Kumar

.. Petitioner

Vs

1.State of Tamil Nadu represented by
The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery,
Chennai – 600 007.

3.The Inspector of Police,
N-2, Kasimedu Police Station,
Chennai.

4.The Superintendent,
Central Prison,
Trichy.

.. Respondents



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Petition filed under Article 226 of the Constitution of India to

issue a writ of Habeas Corpus to call for the entire records relating to the petitioner's brother detention under Tamil Nadu Act 14 of 1982 *vide* detention order dated 01.12.2021 on the file of the second respondent herein made in proceedings No.364/BCDFGISSSV/2021 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's brother viz., Lokesh @ Desappan, S/o. Desingu, aged 22 years, before this Court and set the petitioner's brother at liberty from detention, now the petitioner's brother detained at the Central Prison, Trichy.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.M.Babu Muthumeeran
Addl. Public Prosecutor

ORDER

S.VAIDYANATHAN, J.

and

A.D.JAGADISH CHANDIRA, J.

The petitioner is the brother of the detenu Lokesh @ Desappan, S/o. Desingu, aged 22 years. The detenu has been detained by the second respondent by his order in No.364/BCDFGISSSV/2021 dated 01.12.2021, holding him to be a "Drug Offender", as contemplated



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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 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 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 on behalf of the detenu was not considered in 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



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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 01.12.2021. A representation was made on behalf of the detenu on 22.01.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 28.01.2022. The remarks were duly received on 17.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the representation on 16.06.2022.

6. It is the contention of the petitioner that there was a delay of 20 days in submitting the remarks by the Detaining Authority, of which, 6 days were Government Holidays and hence there was an inordinate delay of 14 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 17.02.2022 and there was a delay of 119 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, 37 days were Government Holidays, hence, there was an inordinate delay of 82 days in considering the representation.



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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 14 days in submitting the remarks by the Detaining Authority and unexplained delay of 82 days in considering



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the representation by the Hon'ble Minister for Home, 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 No.364/BCDFGISSSV/2021 dated 01.12.2021, passed by the second respondent is set aside. The detenu, viz., Lokesh @ Desappan, S/o. Desingu, aged 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(S.V.N., J.) (A.D.J.C., J.)
12.07.2022

Index: Yes/No
nsd



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To

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Home, Prohibition and Excise Department,
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Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery,
Chennai – 600 007.
- 3.The Inspector of Police,
N-2, Kasimedu Police Station,
Chennai.
- 4.The Superintendent,
Central Prison,
Trichy.
- 5.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai – 9.
- 6.The Public Prosecutor,
High Court, Madras.



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