



H.C.P.No.552 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

H.C.P.No.552 of 2022

Jayabal

Petitioner

v

- 1 The State of Tamil Nadu
represented by the Secretary to Government
Home, Prohibition & Excise Department
Fort St. George
Chennai 600 009
- 2 The District Collector and District Magistrate
Thiruvannamalai District
Thiruvannamalai
- 3 The Superintendent of Police
Thiruvannamalai
- 4 The Superintendent
Central Prison
Vellore
- 5 The Inspector of Police
Thanipadi Police Station
Thiruvannamalai

Respondents



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Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS calling for the records relating to the order passed by the second respondent in D.O.No.15/2022-C2 dated 02.03.2022 and quash the same and produce the detenu Ajay, aged 20 years, S/o.Jayabal, who is detained in the Central Prison, Vellore 632 002 before this Court and set him at liberty.

For petitioner	Mr.A.Rajeshkanna
For respondents	Mr.R.Muniyapparaj
	Additional Public Prosecutor

ORDER

[Made by N.ANAND VENKATESH, J.]

The petitioner is the father of the detenu viz., Ajay, aged 20 years, S/o.Jayabal. The detenu has been detained by the 2nd respondent by his order dated 02.03.2022 in D.O.No.15/2022-C2, 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.



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3. The learned Additional Public Prosecutor, on instructions, submitted that the detenu was arrested on 19.01.2022 and the investigation was completed and charge sheet was filed on time on 02.03.2022 and the same has been taken on file by the Special Court for POCSO Act Cases, Tiruvannamalai, in Spl.S.C.No.27 of 2022. The learned Additional Public Prosecutor further submitted that the case is now at the stage of trial.

4. 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.

5. 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



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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.

6. The Detention Order in question was passed on 02.03.2022. The petitioner made a representation on 01.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 01.04.2022. The remarks were duly received on 25.04.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 27.04.2022.

7. It is the contention of the petitioner that there was a delay of 24 days in submitting the remarks by the Detaining Authority, of which 10 days were Government Holidays and hence, there was an inordinate delay of 14 days in submitting the remarks.

8. In **Rekha Vs. State of Tamil Nadu [2011 (5) SCC 244]**, the Hon'ble 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.



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9. 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.

10. In **Tara Chand Vs. State of Rajasthan and others**, reported in **[1980 (2) SCC 321]**, the Hon'ble 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.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 14 days in submitting the remarks by the Detaining Authority. 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 D.O.No.15/2022-C2 dated 02.03.2022, passed by the 2nd respondent is set aside. The detenu viz., Ajay, aged 20 years, S/o.Jayabal, is directed to be released forthwith, unless his detention is required in connection with any other case.

gya
Issue order copy by 16.12.2022

[P.N.P., J.] [N.A.V., J.]
15.12.2022



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AND

N. ANAND VENKATESH, J.

gya

To

- 1 The Secretary to Government
Home, Prohibition & Excise Department
Government of Tamil Nadu
Fort St. George, Chennai 600 009
- 2 The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai-9
- 3 The Sessions Judge
Special Court for POCSO Act Cases, Tiruvannamalai
(Spl.S.C.No.27 of 2022)
- 4 The District Collector and District Magistrate
Thiruvannamalai District, Thiruvannamalai
- 5 The Superintendent of Police
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- 6 The Superintendent
Central Prison, Vellore
- 7 The Inspector of Police
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- 8 The Public Prosecutor
High Court, Madras

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15.08.2022