



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice A.A.NAKKIRAN

H.C.P.No.1190 of 2021

Madan Kumar

.. Petitioner

Vs.

1. The Secretary to the Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.
3. The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Vepery, Chennai - 7.
4. The Superintendent,
Central Prison, Puzhal,
Chennai-600 066.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records pursuant to the order in No.181/BCDFGISSSV/2021 dated 05.07.2021 passed by the 2nd respondent herein and quash the same and consequently produce the body or person of the detenu Madan Kumar, aged about 29 years, S/o.Manickam, now confined in the Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.John Sathyan
for Mr.S.Conscious Ilango
For Respondents : Mr.M.Babu Muthumeeran
Addl. Public Prosecutor



ORDER

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

WEB COPY

The petitioner is the detenu Madan Kumar, aged about 29 years, S/o.Manickam. The detenu has been detained by the second respondent by his order in No.181/BCDFGISSSV/2021 dated 05.07.2021, holding him to be a "Cyber Law Offender", as contemplated under Section 2(bb) 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 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 Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. 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.

5. The Detention Order in question was passed on 05.07.2021. The petitioner made a representation on 14.07.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 16.07.2021. The remarks were duly received on 06.08.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 06.08.2021.

6. It is the contention of the petitioner that there was a delay of 21 days in submitting the remarks by the Detaining Authority, of which, 7 days were Government Holidays and hence there was an inordinate delay of 14 days in submitting the remarks.



WEB COPY

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. 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.181/BCDFGISSSV/2021 dated 05.07.2021, passed by the second respondent is set aside. The detenu, viz., Madan Kumar, aged about 29 years, S/o.Manickam, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

True Copy//

Sub Assistant Registrar

nsd

To

1. The Secretary to the Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.



3. The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Vepery, Chennai - 7.

4. The Superintendent,
Central Prison, Puzhal,
Chennai-600 066.

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

6. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1190 of 2021

NK[co]
NSK 27/04/2022