



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2022

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

H.C.P.No.1529 of 2021

Mothishkumar

..Petitioner/Son of the Detenue

Vs.

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Salem City.
3. The Superintendent of Prison,
Central Prison, Salem.
4. The Inspector of Police,
Kondalampatty Police Station,
Salem District.

..Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent dated 09.09.2021 in C.M.P.No.77/I.T.O/Salem City/2021 against the petitioner's father Vivekanandan s/o.Gopal, aged 46 years, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

For Respondents : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor



ORDER

[Order of the Court was made by A.A.NAKKIRAN, J]

The petitioner is the son of the detenu viz., Vivekanandan s/o.Gopal, aged 46 years. The detenu has been detained by the second respondent by his order in C.M.P.No.77/I.T.O/Salem City/2021 dated 09.09.2021, holding him to be a "Immoral Traffic Offender", as contemplated under Section 2(g) of the 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. 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 09.09.2021. The petitioner made a representation dated 24.09.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 28.09.2021. The remarks were duly received on 07.10.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 28.10.2021.

6. It is the contention of the petitioner that there was a delay of 8 days in submitting the remarks by the Detaining Authority, of which 2 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 07.10.2021 and there was a delay of 3 days in considering the representation by the Hon'ble Minister



for Home, P&E after the Deputy Secretary dealt with it, of which 2 days were Government holiday. Hence, there was inordinate delay of 1 day in considering the representation.

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 6 days in submitting the remarks by the Detaining Authority and unexplained delay of 1 day in considering the representation by the Hon'ble Minister for Home, P&E. 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 C.M.P.No.77/I.T.O/Salem City/2021 dated 09.09.2021 passed by the second respondent is set aside. The detenu, viz., Vivekanandan s/o.Gopal, aged 46 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

gm



To

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Salem City.
3. The Superintendent of Prison,
Central Prison, Salem.
4. The Inspector of Police,
Kondalampatty Police Station,
Salem District.
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.1529 of 2021

MG (CO)
PR (10/03/2022)