



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2022

Coram:

The Honourable Mr. Justice S.VAIDYANATHAN
and
The Honourable Mr. Justice A.D.JAGADISH CHANDRA

H.C.P.No.1879 of 2021

S.Kappaldurai

.. Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by its Secretary to Government,
Prohibition and Excise Department,
Secretariat, Chennai - 9.
2. The District Collector cum District Magistrate,
Kallakurichi.
3. The Superintendent,
Central Prison, Cuddalore.
4. The Superintendent of Police,
Kallakurichi District.
5. The Inspector of Police,
Thirukovilur Police Circle,
Kallakurichi District.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records relating to the Detention Order against detainee Kappaldurai, S/o. Seenuvasan, aged about 50 years in proceedings D.O.No.C2/17/2021, dated 28.07.2021 passed by the second respondent under the U/s.2(ggg) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers, and Video Pirates Act (Tamilnadu Act 14 of 1982) and set aside the same and direct the respondents to produce the detainee now confined at Central Prison, Cuddalore, before this Court and set the detainee at liberty.



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For Petitioner : Ms. D.Chandraleka
For Respondents : Mr. E.Raj Thilak
Additional Public
Prosecutor

ORDER

S.VAIDYANATHAN, J.
and
A.D.JAGADISH CHANDRA, J.

The petitioner S.Kappaldurai is the detenu aged about 50 years, son of Seenuvasan. The detenu has been detained by the second respondent by his order in D.O.No.C2/17/2021, dated 28.07.2021, 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.

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 her 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 in 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 28.07.2021. The petitioner made a representation on 18.10.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 18.10.2021. The remarks were duly



received on 10.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 18.04.2022.

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6. It is the contention of the petitioner that there was a delay of 115 days in submitting the remarks by the Detaining Authority, of which 39 days were Government Holiday and hence there was an inordinate delay of 76 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 10.02.2022 and there was a delay of 68 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 23 days were Government Holidays, hence, there was inordinate delay of 45 days 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 76 days in submitting the remarks by the Detaining Authority and unexplained delay of 45 days in considering the representation by the Hon'ble Minister for Electricity, 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 D.O.No.C2/17/2021, dated 28.07.2021, passed by the second respondent is set aside. The detenu, viz.,



S.Kappaldurai, aged about 50 years, son of Seenuvasan, is directed to be released forthwith unless his detention is required in connection with any other case.

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Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Prohibition and Excise Department,
Secretariat, Chennai - 9.
2. The District Collector cum District Magistrate,
Kallakurichi.
3. The Superintendent,
Central Prison, Cuddalore.
4. The Superintendent of Police,
Kallakurichi District.
5. The Inspector of Police,
Thirukovilur Police Circle,
Kallakurichi District.
6. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1879 of 2021

VG-II (CO)
UMA (13/06/2022)