



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

CORAM

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

H.C.P.No.2176 of 2021

Sadhasivam ..Petitioner/Father of the Detenue

Vs

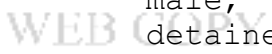
1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate,
Tirupathur District,
Tirupathur - 635 601.
3. The Superintendent of Police,
Tirupathur District,
Tirupathur.
4. The Superintendent,
Central Prison,
Vellore - 2.
5. The Inspector of Police,
Kandili Police Station,
Tirupathur District.

..Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 11.12.2021 passed in C3/D.O.No.63/2021 against the petitioner's son Sathiyamoorthy, male, aged 28 years, S/o.Sadhasivam, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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



(Order of the Court was made by A.D.JAGADISH CHANDIRA, J.)

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.

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 detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

6. It is the contention of the petitioner that there was a delay of 55 days in submitting the remarks by the Detaining Authority, of which, 19 days were Government Holidays and hence there was an inordinate delay of 36 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.

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 36 days in submitting the remarks by the Detaining Authority and unexplained delay of 82 days in considering 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 C3/D.O.No.63/2021 dated 11.12.2021, passed by the second respondent is set aside. The detenu, viz., Sathiyamoorthy, male, aged 28 years, S/o.Sadhasivam, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nsd/49



To

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
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Tirupathur.
4. The Superintendent,
Central Prison,
Vellore - 2.
5. The Inspector of Police,
Kandili Police Station,
Tirupathur District.
6. The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.
7. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2176 of 2021

MG(CO)
RGA(27/06/2022)