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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.2172 of 2021

Tamizhkumar

.. Petitioner

Vs

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Tiruvannamalai District, Tiruvannamalai.

3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.

4.The Superintendent,
Central Prison,
Vellore - 2.

5.The Inspector of Police,
Tiruvannamalai PEW Police Station,
Tiruvannamalai 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 22.12.2021 in D.O.No.121/2021-C2 against the petitioner's father Sankar, male, aged 54 years, S/o.Mottaiyan, who is confined at the 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.)

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, 3 days were Government Holidays and hence there was an inordinate delay of 5 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 02.02.2022 and there was a delay of 77



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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, 24 days were Government Holidays, hence, there was an inordinate delay of 53 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 5 days in submitting the remarks by the Detaining Authority and unexplained delay of 53 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 D.O.No.121/2021-C2 dated 22.12.2021, passed by the second respondent is set aside. The detenu, viz., Sankar, male, aged 54 years, S/o.Mottaiyan, 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/45



To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
- 4.The Superintendent,
Central Prison,
Vellore - 2.
- 5.The Inspector of Police,
Tiruvannamalai PEW Police Station,
Tiruvannamalai 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.2172 of 2021

GPL(CO)
SB(27/06/2022)