



HCP(MD)No.103 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.08.2022

CORAM

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mrs. Justice **R.HEMALATHA**

H.C.P.(MD)No.103 of 2022

S.Mahalingam

.. Petitioner / Father of the
detenu

Vs.

1.The State of Tamil Nadu

Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,

Madurai City
Madurai.

3.The Superintendent

Central Prison,
Madurai

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records pertaining to the proceedings of the 2nd respondent made in his proceedings No.78/BCDFGISSSV/2021 dated 17.12.2021 and quash the same and set the petitioner's son by name Thangapandi, S/o.Mahalingam aged about 38 years at liberty from Central Prison, Madurai/3rd respondent herein.



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For Petitioner : Mr.M.Jegadeeshpandian
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **P.N.PRAKASH, J.**]

The petitioner is the father of the detenu viz., Thangapandi, aged about 38 years, S/o.Mahalingam. The detenu has been detained by the second respondent by his order in No.78/BCDFGISSSV/2021 dated 17.12.2021 holding him to be a "Goonda", as contemplated under Section 2(f) 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



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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 17.12.2021. The petitioner made a representation dated 26.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 04.01.2022. The remarks were duly received on 07.01.2022. 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 the remarks were received on 07.01.2022 and there was a delay of 97 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, 33 days were a Government Holiday and hence, there was inordinate delay of 64 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



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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 64 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.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.78/BCDFGISSSV/2021 dated 17.12.2021 passed by the second respondent is set aside. The detenu, viz., Thangapandi, S/o.Mahalingam aged about 38 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(P.N.P.,J.) (R.H.,J.)
11.08.2022

Index : Yes/No

Internet : Yes

RR



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To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Madurai City
Madurai.
- 3.The Superintendent
Central Prison,
Madurai
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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