



HCP(MD)No.544 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.09.2022

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.544 of 2022

Madasamy

... Petitioner / brother of Detenu

Vs.

1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

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

3.The Superintendent of Prison,
Central Prison,
Coimbatore.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records pertaining to the impugned detention order passed by the second respondent made in his proceedings in M.H.S.Confdl.No.161/2021 dated 15.10.2021 under Section 2(f) of the Tamilnadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce Detenu namely Petchimuthu, S/o.Sankar,



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Male, aged about 20 years, who is detained at Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran
for Mr.C.Gangai Amaran
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the brother of the detenu viz.,Petchimuthu, S/o.Sankar, aged about 20 years. The detenu has been detained by the second respondent by his order in Detention Order M.H.S.Confdl.No. 161/2021 dated 15.10.2021 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.



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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 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 learned Additional Public Prosecutor, on instructions, submitted that the investigation has been completed and a final report has



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also been filed before the learned II Additional District Judge, Tirunelveli and the same has been taken in S.C.No.20 of 2022.

6.The Detention Order in question was passed on 15.10.2021. The petitioner made a representation dated 25.01.2022. The remarks were called for by the Government from the Detaining Authority on 31.01.2022. The remarks were duly received on 09.03.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 18.04.2022.

7.It is the contention of the petitioner that there was a delay of 36 days in submitting the remarks by the Detaining Authority, of which 10 days were Government holidays and hence there was an inordinate delay of 16 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 09.03.2022 and there was a delay of 38 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, 15 days were Government Holidays and hence, there was inordinate delay of 23 days in considering the representation.



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8.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.

9.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.

10.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.

11.In the subject case, admittedly, there is an inordinate and unexplained delay of 16 days in submitting the remarks by the Detaining



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Authority and unexplained delay of 23 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.

12.In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order M.H.S.Confdl.No.161/2021, dated 15.10.2021, passed by the second respondent is set aside. The detenu, viz., Petchimuthu, S/o.Sankar, aged about 20 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(J.N.B.,J.) (N.A.V.,J.)
16.09.2022
(1/2)

Index : Yes/No
Internet : Yes
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