



HCP(MD)No.228 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.09.2022

CORAM

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

H.C.P.(MD)No.228 of 2022

Murugan

..Petitioner /father
of the detenu

Vs.

1.The State of Tamilnadu,
represented by Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George
Chennai-600 009.

2.The District Collector and District Magistrate
Tiruchirappalli District
Tiruchirappalli.

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

.. 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 passed by the 2nd respondent in Cr.M.P.No.7/2022 dated 27.01.2022 under Tamil Nadu Prevention of Dangerous activities of Bootleggers, Cyber Law, Drug Offenders, Forest Offenders, Goondas, Immortal Traffic Offenders,



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Sand Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act – 1982 [Tamil Nadu Act 14 of 1982] thereby detained Shanmugasundaram, S/o.Murugan, aged about 22 years of Rakkampatti, Vettalapatti Village, Manapparai Taluk, Tiruchirappalli District and now detained at Central Prison, Trichy was detained as “Sexual Offender” and quash the same as illegal and arbitrary and direct the respondents to produce the body of the detenu Shanmugasundaram, S/o.Murugan, aged about 22 years before this Court and set him at liberty.

For Petitioner : Mr.P.Ganapathi Subramanian
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

J. NISHA BANU,J.
and
N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Shanmugasundaram, aged about 22 years, S/o.Murugan. The detenu has been detained by the second respondent by his order in Cr.M.P.No.7/2022 dated 27.01.2022 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.



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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 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.



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5. The learned Additional Public Prosecutor, on instructions, submitted that the investigation has been completed and final report has already been filed before the Mahila Court, Trichy in Spl.S.C.No.81/2022. The learned Additional Public Prosecutor further submitted that the case is now posted on 30.09.2022 for examination of LW.1 to L.W.5.

6. The Detention Order in question was passed on 27.01.2022. The petitioner made a representation dated 04.02.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 01.03.2022. The remarks were duly received on 22.03.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 23.05.2022.

7. It is the contention of the petitioner that there was a delay of 21 days in submitting the remarks by the Detaining Authority, of which 6 days were Government holidays and hence there was an inordinate delay of 15 days in submitting the remarks. It is the further contention of the petitioner that remarks were received on 22.03.2022 and there was a delay of 61 days,



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in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, 21 days were a Government Holiday and hence, there was inordinate delay of 40 days in considering the representation.

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



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considering the representation renders the very detention illegal.

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11. In the subject case, admittedly, admittedly, there is an inordinate and unexplained delay of 15 days in submitting the remarks by the Detaining Authority and there is an inordinate and unexplained delay of 40 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 Cr.M.P.No.7/2022 dated 27.01.2022 passed by the second respondent is set aside. The detenu, viz., Shanmugasundaram, S/o.Murugan, aged about 22 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.)
23.09.2022

Index : Yes/No

Internet : Yes

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To

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Home, Prohibition and Excise Department,
Secretariat, Fort St. George
Chennai-600 009.
2. The District Collector and District Magistrate
Tiruchirappalli District
Tiruchirappalli.
3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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