



H.C.P.(MD) No.366 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.07.2022

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

**H.C.P.(MD) No.366 of 2022
and
CrI.M.P.(MD) No.7544 of 2022**

Jothibasu

... Petitioner

-VS-

- 1.The Additional Chief Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009
- 2.The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Theni District, Theni
- 3.The Superintendent of Prison
Madurai Central Prison
Madurai District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records in detention order No. 70/2021, dated 28.12.2021, on the file of the second respondent and quash



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the same and direct the respondents herein to produce the body of the petitioner Jothibas, aged about 39 years, son of Rasuthevar, now confined in Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.Alagumani.R.

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by R.HEMALATHA, J.]

At the outset, it requires to be pointed out that under normal circumstances, this Court would not have taken up final disposal of this habeas corpus petition out of turn. However, it was brought to our notice that the detenu's father died on 27.06.2021 and he was not permitted even to participate in the funeral of his father. In view of the same, the habeas corpus petition is taken up for final disposal.

2. The petitioner is the detenu viz.,Jothibas, aged about 39 years, son of Rasuthevar. The detenu has been detained by the second respondent by his order No.70/2021, dated 28.12.2021, holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this habeas corpus petition.



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3. 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. 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 a 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.

5. The learned Additional Public Prosecutor strongly 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.



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6. The detention order in question was passed on 28.12.2021. The petitioner made a representation on 25.02.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 02.03.2022. The remarks were duly received on 16.03.2022. 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 14 days in submitting the remarks by the Detaining Authority, of which 04 days were Government holidays and hence there was an inordinate delay of 10 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 16.03.2022 and there was a delay of 66 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 23 days were Government holidays, hence, there was inordinate delay of 43 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



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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 [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 10 days in submitting the remarks by the Detaining Authority and unexplained delay of 43 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.



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In the result, the Habeas Corpus Petition is allowed and the order of detention No.70/2021, dated 28.12.2021, passed by the second respondent is set aside. The detenu, viz., Jothibasu, aged about 39 years, son of Rasuthevar, is directed to be released forthwith unless his detention is required in connection with any other case. Consequently, connected miscellaneous petition is closed.

[P.N.P., J.]

[R.H., J.]

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Index : Yes / No

Internet : Yes / No

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To:

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