



HCP(MD)No.397 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.397 of 2022

S.Mandiram

.. Petitioner /Brother of the
detenu

Vs.

1.The State of Tamil Nadu,
Rep by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

3.The Superintendent,
Palayamkottai Central Prison,
Tirunelveli.

4.The Inspector of Police,
Seidunganallur Police Station,
Thoothukudi District.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records relating to the impugned



HCP(MD)No.397 of 2022

order of Detention made in H.S.(M)Confdl.No.33/2022 dated 23.02.2022 on the file of the District Collector and District Magistrate, Thoothukudi District, the second respondent herein, branding the petitioner's brother/detenu by name Sudalaimani, S/o.Sorimuthu, aged about 29 years as 'Goonda' who is now confined in Central Prison, Palayamkottai and quash the impugned order of detention and set him at liberty by producing him before this Court.

For Petitioner :Mr.Rajkumar
For Respondents :Mr.A.Thiruvadikumar,
Additional Public Prosecutor

ORDER

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

The petitioner is the brother of the detenu viz., Sudalaimani, S/o.Sorimuthu, aged about 29 years. The detenu has been detained by the second respondent by his order in H.S.(M)Confdl.No.33/2022 dated 23.02.2022 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.



HCP(MD)No.397 of 2022

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.



HCP(MD)No.397 of 2022

5. The learned Additional Public Prosecutor, on instruction, submitted that the investigation was completed and final report was filed and the same was taken by the designated Court viz., Principal District Judge, Thoothukudi, in Special S.C.No.23 of 2022. It is further submitted that the case was posted on 28.11.2022 for the appearance of the accused.

6. The Detention Order in question was passed on 23.2.2022. The petitioner made a representation dated 10.02.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 14.03.2022. The remarks were duly received on 29.03.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 01.04.2022.

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 4 days were Government holidays and hence, there was an inordinate delay of 10 days in submitting the remarks.



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 10 days in submitting the remarks by the Detaining Authority. The impugned detention order is, therefore, liable to be quashed.



HCP(MD)No.397 of 2022

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M)Confdl.No.33/2022 dated 23.02.2022 passed by the second respondent is set aside. The detenu, viz., Sudalaimani, S/o.Sorimuthu, aged about 29 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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HCP(MD)No.397 of 2022

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- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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