



HCP(MD)No.548 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 30.09.2022

CORAM

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

H.C.P.(MD)No.548 of 2022

Balasubramanian alias Madathan

... Petitioner
/ Father of Detenu

/Vs./

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli 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 connected with the detention order of the respondent No.2 in No.23/BCDFGISSSV/2021 dated 14.03.2022 and quash the same and direct the respondents to produce the detenu by name Sivasubbu alias Siva, S/o.Balasubramanian alias



HCP(MD)No.548 of 2022

Madathan, aged about 24 years, now detained in Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Vinoth Bharathi

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the father of the detenu viz., Sivasubbu alias Siva, S/o.Balasubramanian alias Madathan, aged about 24 years. The detenu has been detained by the second respondent by his order in No. 23/BCDFGISSSV/2022, dated 14.03.2022, 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.

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 second ground urged by the learned counsel appearing for the petitioner is that the detaining authority had relied upon the order passed in CrI.M.P.(MD)No.2227 of 2021, dated 31.03.2021 to come to a conclusion that there is a likelihood of the detenu being granted bail. According to the learned counsel appearing for the petitioner, the similar case that was taken into consideration by the detaining authority to come to a conclusion that there is a likelihood of the detenu being released on bail, is not a similar case.

5. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would submit that though



HCP(MD)No.548 of 2022

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.

6. The Detention Order in question was passed on 14.03.2022. The petitioner made a representation dated 07.03.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 21.04.2022. The remarks were duly received on 02.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 06.05.2022.

7. It is the contention of the petitioner that the remarks were received on 02.05.2022 and there was a delay of 10 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, 4 days were Government Holidays and hence, there was inordinate delay of 6 days in considering the representation.



WEB COPY

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 6 days in considering the representation by the Hon'ble



HCP(MD)No.548 of 2022

Minister for Electricity, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed.

12. Insofar as the second ground raised by the learned counsel appearing for the petitioner, it is seen that the detaining authority has taken into consideration the fact that the detenu has not moved any bail application. Having done so, the detaining authority has taken into consideration the bail order passed in CrI.M.P.(MD)No.2227 of 2021, dated 31.03.2021 and held to be a similar case. In the bail order, the Court had recorded the discharge of the injured from the hospital and the charge against the accused therein was only under Section 109 IPC. The Court had also taken into consideration the period of incarceration of the accused in that case. The facts of the case in that order that was relied upon by the detaining authority cannot be considered to be a similar case and it clearly reflects non-application of mind. The impugned detention order is liable to be quashed on this ground also.

13. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.23/BCDFGISSSV/2022 dated 14.03.2022 passed by the



HCP(MD)No.548 of 2022

second respondent is set aside. The detenu, viz., Sivasubbu alias Siva, S/o.Balasubramanian alias Madathan, aged about 24 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.)
30.09.2022

Index : Yes/No
Internet : Yes
sm

To:

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
State of Tamilnadu,
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.548 of 2022

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

sm

H.C.P.(MD)No.548 of 2022

30.09.2022