



HCP(MD)No.538 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.538 of 2022

Esakkimuthu

.. Petitioner /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 of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records connected with the detention order passed in H.S(M)Confdl No.28/2022 dated 17.02.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Esakkimuthu, aged about



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23 years, S/o.Gunasekaran, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

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

ORDER

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

The petitioner is the detenu viz.,Esakkimuthu, S/o.Gunasekaran, aged 23 years. The detenu has been detained by the second respondent by his order in H.S(M)Confdl No.28/2022 dated 17.02.2022 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.

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



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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 counsel for the petitioner further submitted that the detaining authority has referred to the remand order, wherein the detenu was remanded to judicial custody upto 07.02.2022, whereas, the said order has not been provided to the detenu and what has been provided is only the request for the remand.

5. 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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6. The Detention Order in question was passed on 17.2.2022. The petitioner made a representation dated 21.03.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 07.04.2022. The remarks were duly received on 20.04.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 22.04.2022.

7. It is the contention of the petitioner that there was a delay of 132 days in submitting the remarks by the Detaining Authority, of which 6 days were Government holidays and hence, there was an inordinate delay of 6 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.



WEB COURT

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 submitting the remarks by the Detaining Authority. The detaining authority has stated that the remand of the accused to judicial custody was made upto 07.02.2022 and the remand order itself is not available and it has not been given to the detenu, which reflects the non-application of mind on the part of the detaining authority. It is yet another ground for interfering with the detention order. The impugned detention order is, therefore, liable to be quashed.



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12. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S(M)Confdl No.28/2022 dated 17.02.2022 passed by the second respondent is set aside. The detenu, viz., viz.,Esakkimuthu, S/o.Gunasekaran, aged 23 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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2.The District Collector and District Magistrate,
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4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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