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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

H.C.P(MD) No.567 of 2021

Prasath @ Chiyan Sethu

... Petitioner/Detenu

vs.

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600009.

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

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, calling for the entire records, connected with the detention order of the Respondent No.2 in No.31/BCDFGISSSV/2021 dated 30.03.2021 and quash the same and direct the respondents to produce the body or person of the detenu by name Prasath @ Chiyan Sethu, son of Andirajan, aged about 28 years, now detained as 'Goonda' at Madurai Central Prison before this Honourable Court and set him at liberty forthwith.

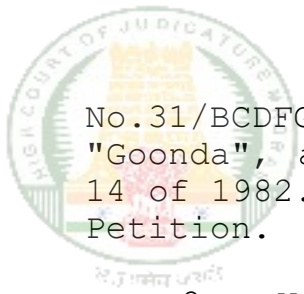
For Petitioner : Mr.R.Alagumani

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

ORDER

**R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.**

The petitioner is the detenu, namely, Prasath @ Chiyan Sethu, son of Andirajan, aged about 28 years. The detenu has been detained by the second respondent by his order in



No.31/BCDFGISSSV/2021 dated 30.03.2021, holding him to be a "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel 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 arguments 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 representations made by the petitioner were not considered in time and there was an inordinate and unexplained delay with regard to the same. The learned counsel also submits that the detention order passed in respect of the co-accused Chellapandi has also been set aside by this Court in HCP(MD)No.575 of 2021, dated 05.10.2021, on the ground of delay in disposal of the representation.

4. The learned Additional Public Prosecutor 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.

5. The Detention Order in question was passed on 30.03.2021. The petitioner made a representation on 05.04.2021 and the same was received on 12.04.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 14.04.2021 and remarks were received on 27.04.2021, in which, there is a delay of 6 days excluding the Government Holidays of 6 days. Ultimately, the petitioner's representation was rejected on 04.05.2021. Thus, there is a delay of 6 days in considering the petitioner's representation which remains unexplained.

6. In **Rekha vs. State of Tamil Nadu**, reported in **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.

7. In **Sumaiya vs. The Secretary to Government**, reported in **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.

8. 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.

9. In the present case, admittedly, there is an unexplained delay of 6 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.31/BCDFGISSSV/2021 dated 30.03.2021 passed by the second respondent is set aside. The detenu, namely, Prasath @ Chiyan Sethu, son of Andirajan, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George,
Chennai -9.



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

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