



HCP(MD)No547 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.547 of 2022

Murugesan

.. Petitioner /father of
the detenu

Vs.

1.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,
Tiruchirapalli District,
Tiruchirapalli.

3.The Superintendent,

Central Prison,
Tiruchirappalli.

.. Respondents

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 passed by the 2nd respondent in Cr.M.P.No.18/2022, dated 28.02.2022 and quash the same as illegal and direct the respondents to produce the body and person of petitioner's son by name S.Maruthupandian,



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S/o.Murugesan, aged about 28 years residing at MGR Nagar Colony, R.Kombai, Nettavelampatti Village, Thuraiyur, Tiruchirappalli District and now detained as a “Goonda” at Central Prison, Trichirappalli before this Court and set him at liberty.

For Petitioner : Mr.P.Ganapathi Subramanian
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu viz., S.Maruthupandian, S/o.Murugesan, aged about 28 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.18/2022, dated 28.02.2022 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.

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.



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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 counsel appearing for the petitioner submitted that the bail petition filed by the detenu was already dismissed and there was no bail petition pending, when the detention order was passed by the detaining authority. The learned counsel further submitted that the similar order that was taken into consideration by the detaining authority cannot be considered to be similar, since the facts that were considered completely different.

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



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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 learned Additional Public Prosecutor, on instructions, submitted that investigation has been completed and final report has been filed before learned Judicial Magistrate, Thuraiyur and the same has been taken on file in P.R.C.No.547 of 2022.

7. The Detention Order in question was passed on 28.02.2022. The petitioner made a representation dated 10.03.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 05.04.2022. The remarks were duly received on 18.04.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 20.04.2022.

8. It is the contention of the petitioner that there was a delay of 12 days in submitting the remarks by the Detaining Authority, of which 6 days



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were Government holidays and hence, there was an inordinate delay of 6 days in submitting the remarks.

9. 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.

10. 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.

11. 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.



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12. In the subject case, admittedly, there is an inordinate and unexplained delay of 6 days in submitting the remarks by the Detaining Authority.

13. The detaining authority has taken into consideration the bail petition filed by the detenu was already dismissed. Insofar as the similar order that was passed in Cr.M.P.Nos.4490 and 4593 of 2019 on 30.09.2019 is concerned, it was a case where the accused therein were already in judicial custody for more than 76 days and the investigation was almost completed. In view of the same, the bail order that was relied upon by the detaining authority cannot be considered as a similar one. That apart, the remand order was not provided to the detenu in vernacular language, which prevented him for making effective representation. Thus, it reflects non application of mind on the part of the detaining authority. The impugned detention order is, therefore, liable to be quashed.

14. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.18/2022, dated 28.02.2022 passed by the second respondent is set aside. The detenu, viz., S.Maruthupandian, S/o.Murugesan,



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aged about 28 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

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

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

3.The Superintendent,
Central Prison,
Tiruchirappalli.

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



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