



HCP(MD)No.667 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.10.2022

CORAM

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

H.C.P.(MD)No.667 of 2022

Abuthakir

... Petitioner / Detenue

Vs.

1.The Principal Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

3.The Superintendent of Police,
Central Prison,
Tiruchirappalli.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings in C.No.34/Detention/C.P.O./T.C/2022 dated 16.03.2022 in detaining the detenue under Section 2(f) of the Tamil Nadu Act 14 of 1982



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as a Goonda and quash the same and direct the respondents to produce the detenu namely Abuthakir S/o Ansar, Male aged about 20 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.A.Joseph Jerry

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Abuthakir, aged about 20 years, S/o.Ansar. The detenu has been detained by the second respondent by his order in C.No.34/Detention/C.P.O/TC/2022 dated 16.03.2022 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 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 that was urged by the learned counsel for the petitioner is that the detaining authority, after noting the fact that the bail application filed by the detainee was dismissed and no bail application was pending as on the date of passing the detention order, had taken into consideration the order passed in CrI.M.P.No.5372 of 2021 and came to the conclusion that in a similar case, bail has been granted and hence, there is a likelihood of the detainee being granted bail. The learned counsel for the



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petitioner submitted that the bail order that was relied upon by the detaining authority cannot be considered to be a similar case and the detention order suffers from non application of mind.

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.

6. The Detention Order in question was passed on 16.03.2022. The petitioner made a representation dated 23.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.05.2022.

7.It is the contention of the petitioner that there was a delay of 3 days in considering the representation by the Hon'ble Minister for Electricity,



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Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, 2 days were Government Holidays and hence, there was inordinate delay of 1 day in considering the representation.

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.



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11. In the subject case, admittedly, there is an inordinate and unexplained delay of 1 day in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary. The impugned detention order is, therefore, liable to be quashed.

12. Insofar as the second ground that was urged by the learned counsel for the petitioner, We have carefully considered the order passed in CrI.M.P.No.5372 of 2021. That was the case, where the Court was pleased to grant bail to the accused persons by taking into consideration the bail that was already granted to the co-accused and the fact that the major portion of the investigation was also over and the long incarceration of the accused persons. It is therefore clear that the facts in the bail order relied upon by the detaining authority, cannot be considered to be a similar case on hand. Hence, the detention order suffers from non application of mind.

13. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.34/Detention/C.P.O/TC/2022, dated 16.03.2022, passed by the second respondent is set aside. The detenu, viz., Abuthakir,



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aged about 20 years, S/o.Ansar, 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.)
14.10.2022

Index : Yes/No
Internet : Yes
ta/Ns



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Home, Prohibition & Excise Department,
Secretariat,
Chennai-600 009.
- 2.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
- 3.The Superintendent of Police,
Central Prison,
Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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