



WEB COPY



HCP(MD)No.721 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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.721 of 2022

Mari

.. Petitioner

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



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PRAAYER : 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.40/2022 dated 01.03.2022 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, Mari, aged about 26 years, S/o.Sollaiappan, 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., Mari, aged about 26 years, S/o.Sollaiappan. The detenu has been detained by the second respondent by his order in H.S(M)Confdl No.38/2022 dated 25.02.2022 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.



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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. Apart from the other grounds, the learned counsel for the petitioner mainly focused his argument on the ground that the detaining authority has specifically stated in the detention order that the remand of the detenu to the judicial custody is on 13.02.2022 upto 25.02.2022. There are no materials available in the paper for the detaining authority to come to



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such a conclusion. Hence, the learned counsel for the petitioner sought for the intervention in the detention order passed by the second respondent.

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 01.3.2022. The petitioner made a representation dated 18.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 02.05.2022. The remarks were duly received on 10.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.05.2022.



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7. It is the contention of the petitioner that there was a delay of 7 days in submitting the remarks by the Detaining Authority, of which 3 days were Government holidays and hence there was an inordinate delay of 4 days in submitting the remarks and further there was a delay of 3 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary.

8. On carefully going through the detention order, it is seen that the remand order is not available in the paper book and inspite of the same, the detaining authority has given a finding that by virtue of order, dated 13.02.2022, the detenu was remanded upto 22.05.2022. Such a finding is based on no material. It, therefore, reflects non application of mind on the part of the detaining authority.

9. In view of the above, the detention order suffers from non-application of mind on the part of the detaining authority and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.



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10. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S(M)Confdl No.40/2022 dated 01.03.2022 passed by the second respondent is set aside. The detenu, viz., Mari, aged about 26 years, S/o.Sollaiappan, 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
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To

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2. The District Collector and District Magistrate,
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Thoothukudi.
3. The Superintendent of Prison,
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Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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