



HCP(MD)No.755 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.10.2022

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

H.C.P.(MD)No.755 of 2022

Sureshkumar

... Petitioner / Detenu

Vs.

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

2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Virudhunagar District.

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 relating connected with the detention order passed of the second respondent in Cr.M.P.No.14/2022 (Goonda), dated 20.04.2022 and quash the same and direct the respondents to produce the body or person of the detenu, by name Suershkumar son of Shankar aged about 28 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.



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For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Sureshkumar, S/o.Sankar, aged about 28 years. The detenu has been detained by the second respondent by his order in Cr.M..P.No.14/2022, dated 20.04.2022 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 learned counsel for the petitioner principally raised two grounds. The first ground is that the similar order that was relied upon by the detaining authority is totally illegible and the same resulted in the detenu not being able to make an effective representation. The second ground that was urged by the learned counsel for the petitioner is that the Tamil translation of the similar order passed in Crl.O.P.No.7900 of 2019 was not furnished in spite of the request made through a representation dated 06.05.2022.

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



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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 further submitted that the investigation has been completed and a final report has been filed before the learned Judicial Magistrate No.1, Sivakasi and the same is yet to be taken on file.

7.The Detention Order in question was passed on 20.04.2022. The petitioner made a representation dated 06.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 24.05.2022.

8.It is the contention of the petitioner that the file was submitted on 17.05.2022 and there was a delay of 5 days, in considering the representation by the Hon'ble Minister for Electricity, 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 3 days in considering the representation.



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.

12.In the subject case, admittedly, there is an inordinate and unexplained delay of 3 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed.



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13. The detention order passed by the detaining authority is liable to be interfered with on the simple ground that the bail order that was relied upon was in English language and the translated copy was not furnished to the petitioner in spite of request made through a representation, dated 06.05.2022. In view of the same, the detenu was not in a position to make an effective representation, which violates his constitutional right. Hence, the detention order is liable to be interfered with.

14.In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.14 of 2022, dated 20.04.2022 passed by the second respondent is set aside. The detenu, viz., Sureshkumar, S/o.Sankar, 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.)
28.10.2022

Index : Yes/No
Internet : Yes
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