



HCP(MD)No.838 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

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.838 of 2022

Sakthivel @ Sakthi

... Petitioner / Detenu

Vs.

1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government.
Home, Prohibition & 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

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 passed in H.S.(MD)Confdl.No.61/2022 dated 06.04.2022 on the file of the second respondent herein and quash the same



HCP(MD)No.838 of 2022

and direct the respondents to produce the detenu or body of the detenu namely, Sakthivel @ Sakthi, aged about 23 years s/o. Chermaraj, 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., Sakthivel @ Sakthi, aged about 23 years, S/o.Chermaraj. The detenu has been detained by the second respondent by his order in H.S.(MD)Confdl.No.61/2022 dated 06.04.2022 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.



WEB COPY

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 there was no bail petition pending as on the date of the passing of the detention order, took into consideration the order passed in Cr.M.P.No.365 of 2018 and came to the conclusion that there is a likelihood of the detenu being released on bail. The learned counsel for the petitioner submitted that the order that was



HCP(MD)No.838 of 2022

relied upon by the detaining authority was not the similar case and hence, the detention order suffers from non-application of mind.

5.The learned Additional Public Prosecutor strongly 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.

6. The Detention Order in question was passed on 06.04.2022. The petitioner made a representation dated 18.04.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 30.05.2022.

7.It is the contention of the petitioner that there was a delay of 4 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it,



HCP(MD)No.838 of 2022

of which, 2 days were Government Holidays and hence, there was inordinate delay of 2 days 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.



11. In the subject case, admittedly, there is an inordinate and unexplained delay of 2 days 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, this Court carefully considered the submission made by the learned counsel for the petitioner. It is seen that the detaining authority was aware of the fact that no bail application was pending as on the date of detention order and the detaining authority has stated that the detenu may file a bail application in future and he will be released on bail. That apart, the detaining authority also took into consideration the order passed in Cr.M.P.No.365 of 2018 and considered the same as similar case, wherein bail was granted.

13. We have carefully gone through the order passed in Cr.M.P.No. 365 of 2018 and it is seen that, that was a case, wherein the Court has recorded that there was no motive between the defacto complainant and the accused therein and the main reason for registering the FIR was because of



HCP(MD)No.838 of 2022

the earlier murder case. The facts of the case as found in the bail order cannot be considered to be a similar case on hand and hence, the suggestion arrived at by the detaining authority suffers from non-application of mind.

14.In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(MD).Confdl.No.61/2022, dated 06.04.2022, passed by the second respondent is set aside. The detenu, viz., Sakthivel @ Sakthi, aged about 23 years, S/o.Chermaraj, 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

