

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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.818 of 2022

Pandi alias Karumalaipandi

... Petitioner /Detenue

Vs.

1.State of Tamil Nadu

Rep by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.

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

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 M.H.S.Confdl.No.47/2022 dated 13.04.2022

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 Pandi alias Karumalaipandi, aged about 30 years, S/o.Arjunan, 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., Pandi alias Karumalaipandi, aged about 30 years, S/o.Arjunan. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.47/2022 dated 13.04.2022 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.

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 main ground, that was urged by the learned counsel for the petitioner is that the detaining authority, after taking into consideration the fact that the detenu had not filed any bail application, took into consideration the order passed in CrI.M.P.No.8022 of 2019 and came to the conclusion that there is a likelihood of the detenu being granted bail. The learned counsel for the petitioner submitted that the order that was relied upon by the detaining authority is not a similar case and hence, the detention order suffers from non application of mind.

5.Insofar as the second ground that was urged by the learned counsel for the petitioner, we have carefully went through the order passed in

Crl.M.P.No.8022 of 2019, in the said case, the defacto complainant himself had filed an affidavit before the Court to the effect that he went to the police station, the police competent sought for some papers and registered the case, based on the same, bail was granted in favour of the accused therein and the Court also took into consideration the long incarceration. The order that was relied upon by the detaining authority cannot be considered as a similar case and the detention order clearly suffers from non application of mind.

6.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.

7.The Detention Order in question was passed on 13.04.2022. The petitioner made a representation on 09.05.2022. The file was submitted by the Detaining Authority on 31.05.2022. Thereafter, the Government

considered the matter and passed the order rejecting the petitioner's representation on 03.06.2022.

8.It is the contention of the petitioner that there was a delay of 7 days in submitting the file by the Detaining Authority, of which 2 days were Government holidays and hence there was an inordinate delay of 5 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.

12.In the subject case, admittedly, there is an inordinate and unexplained delay of 4 days in submitting the file by the Detaining Authority. The impugned detention order is, therefore, liable to be quashed.

13.In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.47/2022 dated 13.04.2022 passed by the second respondent is set aside. The detenu, viz., Pandi alias Karumalaipandi, aged about 30 years, S/o.Arjunan, 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
Ns/Ta

To:

- 1.The Additional Chief Secretary to Government,
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