

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.828 of 2022

Murugan alias Noormohamed

... Petitioner /Detenue

Vs.

1.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,
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.37/2022 dated 29.03.2022 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Murugan alias Noormohamed, aged about 37 years S/o.Rajendran, 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.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Murugan alias Noormohamed, aged about 37 years, S/o.Rajendran. The detenu has been detained by the second respondent by his order in M.H.S.Confdl No:37/2022 dated 29.03.2022 holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 182882. 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 initially FIR was registered under Section 379 of IPC and subsequently, it was altered into under Sections 307 and 506(ii) IPC. The learned counsel for the petitioner submitted that the detaining authority had proceeded on the ground that the case is only pertained to the offence under Sections 307 and 506(ii) IPC without considering the fact that the FIR was registered earlier for the offence under Section 379 IPC.

5. As a continuation to the above ground, the learned counsel impressed upon this Court stating that the detaining authority in the grounds of detention has taken note of the dismissal of the earlier bail petition filed

by the petitioner in Cr.M.P.No.934 of 2022, wherein the offence at that point of time was under Section 379 IPC. However, the detaining authority did not take into consideration the fact that the offence was altered and the order that was taken into consideration by the detaining authority passed in Cr.M.P.No.811 of 2020, cannot be stated to be a similar case and the detention order suffers from non-application of mind.

6.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.

7.The Detention Order in question was passed on 29.03.2022. 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 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 file. It is the further contention of the petitioner that the file was received on 31.05.2022 and there was a delay of 2 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, no day was Government Holiday and hence, there was inordinate delay of 2 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 **182880 (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 5 days in submitting the file by the Detaining Authority and unexplained delay of 2 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.

13. Insofar as the second ground that was urged by the learned counsel for the petitioner, We have carefully gone through paragraph No.6 of the grounds of the detention order. The detaining authority has not taken into consideration the fact that initially the FIR was registered under Section 379 IPC. It was only at that point of time, the bail petition was filed by the detenu and the same came to be dismissed. Admittedly, no bail petition was filed subsequently. Further, the detaining authority has considered the bail order in Cr.M.P.No.811 of 2020, wherein the offence was under Section 307

IPC, and that order was passed on the peculiar facts of that case. In the present case, the allegations as contended in the FIR cannot be considered to be a similar case as that of the order that was passed in Cr.M.P.No.811 of 2020. This clearly shows non-application of mind on the part of the detaining authority. The impugned detention order is therefore, liable to be quashed.

14.In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.37/2022 dated 29.03.2022 passed by the second respondent is set aside. The detenu, viz., Murugan alias Noormohamed, aged about 37 years, S/o.Rajendran, 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

To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Tenkasi District, Tenkasi.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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