



H.C.P.(MD)No.909 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.909 of 2022

Murugan

.. Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

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

3.The Superintendent of Prison,
Central Prison,
Palayamkottai.

.. Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records pursuant to the proceedings of the respondent No.2 in Detention Order M.H.S.Confdl.No. 54/2022, dated 02.05.2022 quash the same and consequently direct the respondents to produce the detenu namely, Esakkiappan @ Dass, son of Murugan, aged about 26 years, who is now detained in Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.M.Subash Babu

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **N.ANAND VENKATESH, J.**]

The petitioner is the father of the detenu viz., Esakkiappan @ Dass, son of Murugan, aged about 26 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.54/2022, dated 02.05.2022, holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) 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. 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



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detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The learned Additional Public Prosecutor, on instructions, submitted that the detenu was arrested in this case on 03.04.2022 and the investigation was completed and the final report was filed on 30.05.2022 before the POSCO Court, Tirunelveli. It was submitted that the final report was not taken on file, for want of DNA report.

6. It was submitted that the final report was returned by the concerned Court on the ground that the DNA report was not filed along with the final report. This Court after taking into consideration the Criminal Rules of Practice, has already given a direction that the final report cannot be refused to be taken on file, due to non-filing of the scientific report. In spite of such directions being passed by this Court, this practice continues. The learned Judge, POCSO Court, Tirunelveli, is directed to take the final report immediately on file and proceed further in accordance with law.



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7. The Detention Order in question was passed on 02.05.2022.

The petitioner made a representation dated 27.05.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 16.06.2022. The remarks were duly received on -Nil-. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 04.07.2022.

8. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining Authority, of which 4 days were Government holidays and hence there was an inordinate delay of 6 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on -Nil- 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, there is no Government Holiday and hence, there was inordinate delay of 5 days in considering the representation.



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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.



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12. In the subject case, admittedly, there is an inordinate and unexplained delay of 6 days in submitting the remarks by the Detaining Authority and unexplained delay of 5 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. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S. Confdl. No.54/2022, dated 02.05.2022 passed by the second respondent is set aside. The detenu, viz., Esakkiappan @ Dass, son of Murugan, aged about 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.S.R., J.) (N.A.V., J.)

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Index : Yes/No
Internet : Yes
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- 4.The Additional Public Prosecutor,
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