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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.1003 of 2021

Esack

... Petitioner/Detenu

Vs.

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

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

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records connected with the Detention Order of the second respondent in M.H.S.Confdl. No.57/2021 dated 16.06.2021 and quash the same and direct the respondents to produce the body or person of the detenu by name Esack S/o.Arumairaj, aged about 37 years, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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

O R D E R

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

The petitioner is the detenu, namely, Esack S/o.Arumairaj, aged about 37 years. The detenu has been detained by the second respondent by his proceedings in M.H.S. Confdl. No.57 of 2021 dated 16.06.2021 holding him to be a "Boot-legger", as contemplated under



Section 2(b) 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 for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

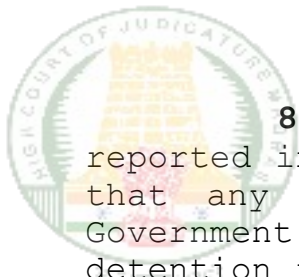
3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representations made by the petitioner were not considered on time and there was an inordinate and unexplained delay with regard to the same.

4. The learned Additional Public Prosecutor 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.

5. The Detention Order in question was passed on 16.06.2021. The petitioner made a representation dated 01.07.2021 and the same was received on 08.07.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 08.07.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 20.10.2021. Though the representation dated 01.07.2021 was received, it was rejected only on 20.10.2021 with the delay of 26 days, after excluding the Government Holidays of 16 days. The delay in considering the representation remains unexplained.

6. In ***Rekha vs. State of Tamil Nadu***, reported in **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.

7. In ***Sumaiya vs. The Secretary to Government***, reported in **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.



8. 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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9. In the subject case, admittedly, there is an unexplained delay of 26 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S. Confdl. No.57 of 2021 dated 16.06.2021 passed by the second respondent is set aside. The detenu, namely, Esack S/o.Arumairaj, aged about 37 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.



4.The Joint Secretary to Government,
Public(Law & Order),
Fort St.George,
Chennai-9.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1003 of 2021
10.02.2022

RK(25/02/2022) 4P 6C