



HCP(MD)No.988 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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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.988 of 2022

Perumal

.. Petitioner /Father of the detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition & Excise
Department, Secretariat,
Chennai-9.

2.The District Magistrate and District Collector,
Office of the District Magistrate and
District Collector, Velunachiar Valagam,
Dindigul-624 004.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

.. Respondents

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 of the Respondent No.2 in Detention Order No.26/2022 dated 01.04.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Lakshmanan, S/o.Perumal, aged



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about 22 years, now detained as “Goonda” at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner :Mr.M.Vivek Bharathi
For Respondents :Mr.A.Thiruvadikumar,
Additional Public Prosecutor

ORDER

J. NISHA BANU,J.
and
N. ANAND VENKATESH,J.

The petitioner is the Father of the detenu viz.,Lakshmanan, aged about 22 years, S/o.Perumal. The detenu has been detained by the second respondent by his order in Detention Order No.26/2022 dated 01.04.2022 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.



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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 learned counsel for the petitioner is that the detaining authority after noting the fact that the detenu has not filed any bail petition before the Court, took into consideration the order passed in CrI.M.P.No.971 of 2020. The learned counsel submitted that the order that was relied upon by the detaining authority was not a 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 by filing his counter. He would submit that though there was delay in considering the representation, on that score alone, the



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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 01.04.2022. The petitioner made a representation dated 15.06.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on Nil. The remarks were duly received on Nil. The file submitted by the Detaining Authority on 28.06.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 01.07.2022.

7. It is the contention of the petitioner that there was a delay of 7 days in submitting the remarks by the Detaining Authority, of which 3 days were Government holidays and hence, there was an inordinate delay of 4 days in submitting the remarks.

8. In **Rekha vs. State of Tamil Nadu (2011 (5) SCC 244)**, the Honourable Supreme Court has held that the procedural safeguards are



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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 4 days in submitting the remarks by the Detaining Authority.



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12. We have carefully gone through the order passed in Crl.M.P.No.971 of 2020. The Court had granted bail in the said case, after taking into consideration the long incarceration suffered by the accused person therein and the fact that there was no previous case pending against him. That apart, that was the case pertaining to the offence under Section 302 IPC and in the present case, the offence pertained to Section 302 IPC and also under Section 3(2)(5)(a) of the SC/ST Act. The order that was relied upon by the detaining authority is not the similar case and hence, the detention order clearly suffers from non-application of mind and 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 Detention Order No.26/2022 dated 01.04.2022 passed by the second respondent is set aside. The detenu, viz., Lakshmanan, aged about 22 years, S/o.Perumal, 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



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