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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.(MD) No.1362 of 2021

M.Sivaguru ... Petitioner/father of the Detenu

Vs.

1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort st. George, Chennai - 600 009.

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

3.The Superintendent of Prison,
Central Prison, Trichy,
Trichy District. ...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.127 of 2021, dated 27.08.2021 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 the petitioner's son ie., Deepakraja, aged about 27 years, S/o.Sivaguru, now detained at Central Prison, Trichy,, before this Honourable Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan,
For Respondents : Mr.S.Ravi,
Additional Public Prosecutor.

O R D E R

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

The Petitioner is the mother of the detenu, namely, Deepakraja, S/o.Sivaguru, aged about 27 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.127 of 2021, dated 27.08.2021, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of

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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 27.08.2021. The petitioner made a representation, dated 14.09.2021 and the same was received on 16.09.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 16.09.2021 and the remarks were received on 22.11.2021, in which, there was a delay of 41 days, after excluding the Government Holidays of 25 days. Thereafter, the Minister for Electricity, Prohibition and Excise has dealt with the representation on 26.11.2021 and ultimately, the representation of the petitioner was rejected on 02.12.2021. Thus there is a delay of 39 days in considering the representation which 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.

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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.

9. In the subject case, admittedly, there is an unexplained delay of 21 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.127 of 2021, dated 27.08.2021, passed by the second respondent is set aside. The detenu, namely, Deepakraja, S/o.Sivaguru, aged about 27 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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/ /2022

Sub Assistant Registrar(CS)

pm

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,
Home, Prohibition and Excise Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

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

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

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

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

ORDER MADE IN
H.C.P(MD).No.1362 of 2021
29.03.2022

SB(CO)
TR(22.04.2022) 4P 6C

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