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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.1475 of 2021

Stalin @ Sali

... Petitioner / Detenu

Vs.

1.The 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,

Office of the District Collector and District Magistrate,

Kanniyakumari at Nagercoil.

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, calling for the entire records connected with the detention order of the second respondent in P.D.No.30/2021, dated 06.09.2021 and quash the same and direct the respondents to produce the body or person of the detenu by name Stalin @ Sali, S/o.Nadarajan, aged about 31 years now, detained at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.S.Ravi,

Additional Public Prosecutor.

ORDER

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

The petitioner is the detenu, namely, Stalin @ Sali, S/o.Nadarajan, aged about 31 years. The detenu has been detained by the second respondent by his proceedings in P.D.No.30/2021, dated 06.09.2021, 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 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 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 06.09.2021. The petitioner made a representation, dated 22.09.2021 and the same was received on 27.09.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 27.09.2021 and remarks were received on 02.12.2021, in which, there is a delay of 40 days excluding the Government Holidays of 25 days. Thereafter, the Deputy Secretary has dealt with the representation on 03.12.2021 and Minister for Electricity, Prohibition and Excise has dealt with the representation on 08.12.2021. Ultimately, the petitioner's representation was rejected on 03.01.2021. Thus, there is a delay of 40 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.



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 40 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 P.D.No.30/2021, dated 06.09.2021, passed by the second respondent is set aside. The detenu, namely, Stalin @ Sali, S/o.Nadarajan, aged about 31 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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To

1. The 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,
Office of the District Collector and District Magistrate,
Kanniyakumari at Nagercoil.

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

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.

H.C.P. (MD) No.1475 of 2021

05.04.2022

PK(CO)

TR(12.04.2022) 3P 6C