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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.1498 of 2021

I.Nisha

... Petitioner/Daughter of the Detenu
Vs.

1.State of Tamil Nadu

Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

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

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

...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 passed in M.H.S.Confdl No.142/2021 dated 14.09.2021 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 father i.e., Rajapandian, S/o.Pitchandi Thevar, aged about 52 years, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.G.Karuppasamy Pandian
for Mr.P.Senguttarasan
For Respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor.

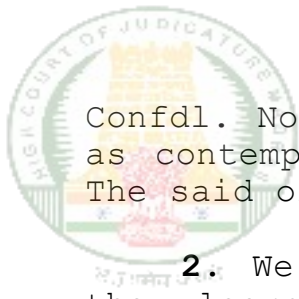
O R D E R

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

The petitioner is the daughter of detenu, namely, Rajapandian, S/o.Pitchandi Thevar, aged about 52 years. The detenu has been detained by the second respondent by his proceedings in M.H.S.



Confdl. No.142/2021 dated 14.09.2021 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.

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 15.07.2021. The petitioner made a representation dated 31.07.2021 and the same was received on 05.08.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 05.08.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 28.10.2021. Though the representation dated 31.07.2021, was received on 05.08.2021, it was rejected only on 28.10.2021 with the delay of 41 days, after excluding the Government Holidays of 22 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.

9. In the subject case, admittedly, there is an unexplained delay of 41 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.142/2021 dated 14.09.2021 passed by the second respondent is set aside. The detenu, namely, Rajapandian, S/o.Pitchandi Thevar, aged about 52 years, is directed to be released forthwith unless his detention is required in connection with any other case.

11. We also find that the final report in this case has been filed on 21.01.2022, i.e., beyond the statutory period of 90 days. In many cases, which we come across, it is found that the delay is attributed by the Police to the non-taking on file the final reports by the respective Judicial Magistrate / Courts and this has led to the accused in several heinous crimes to be enlarged, on statutory bail.

12. We, therefore, direct the Police in future, to file all final reports On-line and such On-line filing of final reports by the Police, will be in compliance with the requirements of Rule 25 of the Criminal Rules of Practice, 2019.

13. It is further found that the Police are under the general impression that once the detention order is passed under the Act 14 of 1982, the requirement to file final report within 90 days will not apply. We make it clear that the requirement of filing of charge sheet within the mandatory period will apply even in cases, where the accused have been detained under the Act 14 of 1982.

14. We have also come across the cases, where the final reports are returned by the Judicial Magistrate / Courts on the ground that they are not accompanied by the Viscera Report, Biology Report, Serological Report, Chemical Report and DNA Test Report. Sub Rule 7 of Rule 25 of the Criminal Rules of Practice, 2019, makes it clear that the Magistrate of the Courts shall not return the final report on the ground that the above reports are not enclosed along with the final report.

15. The Judicial Magistrates / Criminal Courts shall not return the final reports for such non-enclosure of the reports which are listed out as Nos.(vii) to (x) & (xxix) of Sub Rule 7 of Rule 25 of the Criminal Rules of Practice. This direction shall be



scrupulously followed by all the Criminal Courts and the Criminal Courts shall also ensure that the final reports are filed On-line. The Director General of Police is required to issue required Circulars to the respective Police Stations to ensure compliance with the above orders.

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16. The Registry is directed to place this order before the Hon'ble Chief Justice to enable the Registry to issue appropriate Circulars to the Criminal Courts.

Sd/-

Assistant Registrar (CS III)

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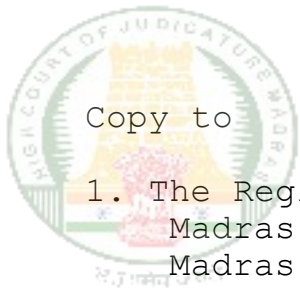
13/04/2022

Sub Assistant Registrar (CS)

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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,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George,
Chennai - 9.



Copy to

1. The Registrar General,
Madras High Court,
Madras - 104.
2. The Registrar Judicial,
Madurai Bench of Madras High Court,
Madurai.
3. The Section Officer,
'F' Section,
Madurai Bench of Madras High Court,
Madurai.

**H.C.P. (MD) No.1498 of 2021
11.04.2022**

PA(13.04.2022) 5P 9C