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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.1582 of 2021

Govindharasu

... Petitioner/Father of the detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai -9.

2.The State, represented by
The District Collector and the District
Magistrate,
Pudukkottai District,
Pudukkottai.

3.The State, represented by
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, to call for the records from the second respondent in P.D.O.No.34 of 2021, dated 2.7.2021 by setting aside the said order of detention passed by the second respondent and setting the detenu Vadivelu, son of Govindharasu, aged 37, at liberty now detained in the Central Prison, Trichy.

For Petitioner : Mr.G.Mathavan

For Respondents : Mr.T.Senthilkumar,
Additional Public Prosecutor.

O R D E R

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

The petitioner is the father of the detenu, namely, Vadivelu, S/o.Govindharasu, aged about 37 years. The detenu has been detained by the second respondent by his order in P.D.O.No.34/2021, dated 02.07.2021, holding him to be a "Goonda", as contemplated under 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.

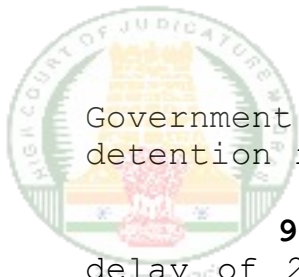
4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been 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 02.07.2021. The petitioner made a representation, dated 4.10.2021 and the same was received on 06.10.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 6.10.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 6.12.2021. Though the representation, dated 04.10.2021 was received on 06.10.2021, it was rejected only on 06.12.2021 with a delay of 29 days, after excluding the Government Holidays of 20 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 29 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.O.No.34/2021 dated 02.07.2021, passed by the second respondent is set aside. The detenu, namely, Vadivel, S/o.Govindaraj, aged about 37 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsn

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,
Fort St.George,
Chennai -9.
- 2.The District Collector and the District
Magistrate,
Pudukkottai District,
Pudukkottai.
- 3.The Superintendent of Prison,
Central Prison,
Trichy,
Trichy District.



4 The Joint Secretary to Government,
Public (Law & Order) Department,
Fort.St.George, Chennai -600 009.

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

ORDER MADE IN
H.C.P (MD) No.1582 of 2021
08.02.2022

MK/21.02.2022/4P/6C