



HCP(MD)No.1469 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.1469 of 2022

Manoharan

... Petitioner / Father of the Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Fort St.George,
Chennai-600 009.

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

3.The Inspector of Police,
Palani Town Police Station,
Dindigul District.

4.The Superintendent of Prison,
Central Prison, Madurai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records pertaining to the order of detention passed by the second respondent in his proceedings detention



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order No.17/2022 dated 04.03.2022 and quash the same as illegal and produce the detenu namely Pon Kumar, S/o.Manoharan aged about 22 years now he is confined in Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.T.Lenin Kumar

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., Pon Kumar, aged about 22 years, S/o.Manoharan. The detenu has been detained by the second respondent by his order in Detention Order No.17/2022 dated 04.03.2022 holding him to be a "Goonda", as contemplated under Section 2(f) of the 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.

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. The second ground that was urged by the learned counsel for the petitioner is that the detaining authority has taken note of the fact that the earlier bail application that was filed by the detenu was dismissed by the Magistrate and the second bail application filed before the Sessions Court was pending. Thereafter, the detaining authority taking into consideration the order passed in CrI.M.P.No.1612 of 2018, came to the conclusion that there is a likelihood of the detenu being granted bail.



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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 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 04.03.2022. The petitioner made a representation dated 01.09.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 17.09.2022.

7. It is the contention of the petitioner that there was a delay of 6 days in submitting the file by the Detaining Authority, of which 3 days were Government holidays and hence, there was an inordinate delay of 3 days in submitting the file.



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8.In Rekha vs. State of Tamil Nadu (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.

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 3 days in submitting the remarks by the Detaining Authority. The impugned detention order is, therefore, liable to be quashed.



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12. Insofar as the second ground that was urged by the learned counsel for the petitioner, we have carefully gone through the order passed in Crl.M.P.No.1612 of 2018, in which the Court had taken into consideration the facts that the injured was discharged from the hospital and the accused person was in incarceration for a long time and the co-accused had already been released on bail. In view of the same, the bail order that was relied upon by the detaining authority cannot be considered to be a similar case and it clearly reflects non-application of mind.

13. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.17/2022 dated 04.03.2022, passed by the second respondent is set aside. The detenu, viz., Pon Kumar, aged about 22 years, S/o.Manoharan, 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

Index : Yes/No
Internet : Yes
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