



H.C.P.(MD) No.1725 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2022

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

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Arulseeli

... Petitioner

-VS-

- 1.State rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate,
Kanyakumari District,
at Nagercoil.



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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records pertaining to the impugned detention order passed by the second respondent made in P.D.No.44/2021 dated 31.10.2021 by setting aside the said order of detention and setting the detenu namely Reegan, S/o.Mani, aged about 35 years, who is now detained in Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.K.Prabhu

For Respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

ORDER

[Made by P.N.PRAKASH, J.]

The petitioner is the detenu viz., Reegan, aged about 35 years. The detenu has been detained by the second respondent by his order in P.D.No.44/2021 dated 31.10.2021, holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



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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 learned Additional Public Prosecutor strongly 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.



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5. The Detention Order in question was passed on 31.10.2021. The petitioner made a representation on 13.11.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 17.11.2021. The remarks were duly received on 07.12.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.01.2022.

6. It is the contention of the petitioner that there was a delay of 19 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holiday and hence there was an inordinate delay of 13 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 07.12.2021 and there was a delay of 25 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 9 days were Government Holidays, hence, there was a delay of 16 days in considering the representation.



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7. 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.

8. 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.

9. 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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