



HCP(MD)No.1565 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.10.2022

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.1565 of 2022

Danielraj

... Petitioner / Detenu

Vs.

1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai-600 009.

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

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

4.The Superintendent,
District Jail, Perurani,
Thoothukudi 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 passed in H.S.(M)Confdl.No.65/2022, dated 12.04.2022



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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, Danielraj, aged about 22 years, S/o.Maheshkumar, now detained at the District Jail, Perurani, Thoothukudi District before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Danielraj, S/o.Maheshkumar, aged about 22 years. The detenu has been detained by the second respondent by his order in H.S.(M)Confdl.No.65/2022, dated 12.04.2022 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.



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WEB COPY 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, after taking into account the fact that no bail petitioner was pending as on the date of passing the detention order, had taken note of the order passed in CrI.O.P.(MD)No.23893 of 2016 and came to the conclusion that it is a similar case and there is a likelihood of the detenu being granted bail. The learned counsel for the petitioner submitted that the bail order that was relied upon by the detaining authority cannot be considered to be a similar case.

5. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would submit that though



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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 12.04.2022. The petitioner made a representation dated 25.08.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.09.2022.

7. It is the contention of the petitioner that there was a delay of 5 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence, there was an inordinate delay of 3 days in submitting the remarks.

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



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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.

12. Insofar as the second ground that was urged by the learned counsel for the petitioner, We have carefully considered the order passed in



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CrI.O.P.(MD)No.23893 of 2016. That was the case, where investigation was completed and final report was filed and also taken on file by the concerned Court. That apart, the accused therein had undergone sufficient period of incarceration and hence, this Court granted bail to the accused therein. It is therefore clear that the order relied upon by the detaining authority, cannot be considered to be a similar case on hand. Hence, the detention order suffers from non application of mind.

13.In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M)No.Confdl.No.65 of 2022, dated 12.04.2022, passed by the second respondent is set aside. The detenu, viz., Danielraj, S/o.Maheshkumar, aged about 22 years, 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.)
28.10.2022

Index : Yes/No
Internet : Yes
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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