



H.C.P.(MD) No.1834 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2022

CORAM:

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

H.C.P.(MD) No.1834 of 2021

Viji @ Vijayakumar

... Petitioner

-VS-

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City, Tirunelveli.

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

... Respondents



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WEB CONTENT

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 No.62/BCDFGISSSV/2021 dated 02.11.2021 on the file of the second respondent herein and quash the same and direct the respondents to produce the body or person of the detenu namely, Viji alias Vijayakumar S/o.Sankar, aged 22 years, now confining as 'Goonda' at the central prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.S.Ravi,
Additional Public Prosecutor

ORDER

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

The petitioner is the detenu viz., Viji alias Vijayakumar, aged about 22 years, son of Sankar. The detenu has been detained by the second respondent by his detention order in No.62/BCDFGISSSV/2021 dated 02.11.2021, 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.



H.C.P.(MD) No.1834 of 2021

WEB COPY

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 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.



H.C.P.(MD) No.1834 of 2021

WEB COPY

5. The Detention Order in question was passed on 02.11.2021. The petitioner made a representation on 13.11.2021. Thereafter, representation was received on 22.11.2021. The remarks were duly received on 24.11.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 06.12.2022.

6. It is the contention of the petitioner that there was a delay of 8 days in receiving the representation, of which 5 days were Government Holiday and hence there was a delay of 3 days in receiving the representation. It is the further contention of the petitioner that the remarks were received on 22.11.2021 and there was a delay of 11 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 3 days were Government Holidays, hence, there was an inordinate delay of 8 days in considering the representation.

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



H.C.P.(MD) No.1834 of 2021

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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 3 days in receiving the representation and unexplained delay of 8 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed.



H.C.P.(MD) No.1834 of 2021

WEB COPY

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in in No.62/BCDFGISSSV/2021 dated 02.11.2021, passed by the second respondent is set aside. The detenu, viz., Viji alias Vijayakumar, aged about 22 years, son of Sankar, is directed to be released forthwith unless his detention is required in connection with any other case.

[P.N.P., J.] [R.H., J.]
02.08.2022

Index : Yes / No
Internet : Yes / No
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H.C.P.(MD) No.1834 of 2021

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H.C.P.(MD) No.1834 of 2021

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