



HCP(MD)No.1905 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.09.2022

CORAM

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

H.C.P.(MD)No.1905 of 2021

Suresh

.. Petitioner /detenu

Vs.

1.State of Tamilnadu,
rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

2.The District Collector and District Magistrate
Kanyakumari District
Nagercoil.

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

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records connected with the detention order passed in P.D.No.50/2021 dated 30.11.2021 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, Suresh, aged about 26



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years, S/o.Rajagopal, now detained at the Central Prison, Palayamkottai, 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., Suresh, aged about 26 years, S/o.Rajagopal. The detenu has been detained by the second respondent by his order in P.D.No.50/2021 dated 30.11.2021 holding him to be a "Cyber Law Offender", as contemplated under Section 2(bb) 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 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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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.

5. The learned Additional Public Prosecutor, on instructions, submitted that the investigation has been completed and final report has been filed before the Judicial Magistrate, No.II, Nagercoil. The relevant



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record shall also placed before this Court and it is seen that the final report has been filed in filing No.15825/2022.

6. The Detention Order in question was passed on 30.11.2021. The petitioner made a representation dated 09.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.12.2021. The remarks were duly received on 27.01.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 18.04.2022.

7. It is the contention of the petitioner that there was a delay of 42 days in submitting the remarks by the Detaining Authority, of which 17 days were Government holidays and hence there was an inordinate delay of 25 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 27.01.2022 and there was a delay of 79 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, 25 days were a Government Holiday and hence, there was inordinate delay of 54 days in considering the representation.



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 25 days receiving the marks and there is also a delay of 54 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. The impugned detention



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order is, therefore, liable to be quashed. There shall be a direction to the learned Judicial Magistrate No.II, Nagercoil, to immediately act upon the final report and proceed in accordance with law.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.50/2021 dated 30.11.2021 passed by the second respondent is set aside. The detenu, viz., Suresh, S/o.Rajagopal, aged about 26 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.)
23.09.2022

Index : Yes/No
Internet : Yes
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To

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Madurai Bench of Madras High Court,
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