



HCP(MD)No.1924 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.06.2022

CORAM

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **R.VIJAYAKUMAR**

H.C.P.(MD)No.1924 of 2021

Kanthasamy

.. Petitioner / detenu

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Office of the Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

.. 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 of the Respondent No.2 in H.S.(M)Confdl.No.172/21 dated 14.11.2021 and quash the same and direct the respondents to produce the



HCP(MD)No.1924 of 2021

body or person of the detenu by name Kanthasamy @ Raja, son of Nallakanu aged about 25 years, now confining as “Goonda” at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

[Order of the Court was made by **R.VIJAYAKUMAR, J.**]

The petitioner is the detenu viz., Kanthasamy @ Raja, aged about 25 years, son of Nallakanu. The detenu has been detained by the second respondent by his order in H.S.(M)Confdl.No.172/21 dated 14.11.2021 holding him to be a "Goonda", as contemplated under Section 2(f) 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.



HCP(MD)No.1924 of 2021

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 Detention Order in question was passed on 14.11.2021. The petitioner made a representation on 06.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.12.2021.



HCP(MD)No.1924 of 2021

The remarks were duly received on 04.01.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.06.2022.

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 7 days were Government Holidays and hence there was an inordinate delay of 12 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 04.01.2022 and there was a delay of 162 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 52 days were Government Holidays, hence, there was inordinate delay of 110 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 allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.



HCP(MD)No.1924 of 2021

WEB COPY

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 12 days in submitting the remarks by the Detaining Authority and unexplained delay of 110 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.



HCP(MD)No.1924 of 2021

WEB COPY

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M)Confdl.No.172/21 dated 14.11.2021 passed by the second respondent is set aside. The detenu, viz., Kanthasamy @ Raja, S/o.Nallakanu, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(P.N.P.,J.) (R.V.,J.)
29.06.2022

Index : Yes/No
Internet : Yes
RR



HCP(MD)No.1924 of 2021

WEB COPY

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HCP(MD)No.1924 of 2021

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