



H.C.P.No.1103 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2023

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

H.C.P.No.1103 of 2022

Nagarjun

Vs.

Petitioner

1. The Additional Chief Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Chennai 600 009.
2. District Collector and District Magistrate,
Kallakurichi District, Kallakurichi.
3. The Superintendent of Police,
Kallakurichi District, Kallakurichi
4. The Superintendent of Prison,
Cuddalore
5. The Inspector of Police,
Thirukovilur Police Circle,
Kallakurichi District

Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a



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WRIT OF HABEAS CORPUS to call for the records in C2/20/2022 on the file of the second respondent quash the detention order dated 12.05.2022 and direct the respondent to produce of the detenu SANKAR @ SUN KATHIRESAN SON OF AZHAGAPPAN presently detained as a Goonda at the Central Prison Cuddalore under the Tamil Nadu Act 14 of 1982 before this Court and set him at Liberty.

For Petitioner : Mr.A.M.Rahamath Ali
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the son of the detenu *viz.*, Sankar @ Sun Kathiravan S/o. Azhagappan. The detenu has been detained by the 2nd respondent by his order dated 12.05.2022 in C2/20/2022 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



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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 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 detainee 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 12.05.2022. The



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petitioner made a representation dated 07.06.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 04.07.2022.

6. It is the contention of the petitioner that there was a delay of 16 days in considering the representation by the Hon'ble Minister concerned, after the Deputy Secretary dealt with it, of which 4 days were Government holidays. Hence, there was inordinate delay of 12 days in considering the representation.

7. In **Rekha Vs. State of Tamil Nadu [2011 (5) SCC 244]**, the Hon'ble 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



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sufficient to set aside the order of detention.

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9. In **Tara Chand Vs. State of Rajasthan and others**, reported in [1980 (2) SCC 321], the Hon'ble 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 considering the representation by the Hon'ble Minister concerned. The impugned detention order is, therefore, liable to be quashed.

In the result, the Habeas Corpus Petition is allowed and the order of detention in C3/D.O.No.31/2022 dated 22.05.2022, passed by the 2nd respondent is set aside. The detainee *viz.*, Srinivasan, Male aged 45 years S/o.Shanmugam is directed to be released forthwith, unless his detention is required in connection with any other case.

[P.N.P., J.] [N.A.V., J.]
09.01.2023

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P.N.PRAKASH, J.
AND
N. ANAND VENKATESH, J.

rka

To

1. The Additional Chief Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Chennai 600 009.
2. District Collector and District Magistrate,
Kallakurichi District, Kallakurichi.
3. The Superintendent of Police,
Kallakurichi District, Kallakurichi
4. The Superintendent of Prison,
Cuddalore
5. The Inspector of Police,
Thirukovilur Police Circle,
Kallakurichi District
- 6 The Public Prosecutor
High Court, Madras

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R.MAHADEVAN, J

&

N.ANAND VENKATESH, J

This petition is listed today under the caption "for being mentioned" at the instance of the learned counsel for the petitioner.

2. The learned counsel for the petitioner fairly submits that in the petition viz., HCP No.1103 of 2022, the name of the detenu was wrongly mentioned as "Sankar @ Sun Kathiresan instead of Sankar @ Sun Kathiravan" due to inadvertent mistake. He also submits that in the operative portion of the order dated 09.01.2023 made in the said HCP, the order of the detention was wrongly mentioned as "C3/D.O.No.31/2022 dated 22.05.2022" instead of "C2/20/2022 dated 12.05.2022" and that, the details of the detenu were also wrongly mentioned as "Srinivasan, Male aged 45 years S/o.Shanmugam" instead of "Sankar @ Sun Kathiravan aged 40 years S/o.Azhagappan" due to typographical error. Therefore, the learned counsel seeks to correct the mistakes crept-in in the said order.



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3. Conceding the aforesaid submissions made by the learned counsel for the petitioner, the learned Government Advocate (Crl.Side) appearing for the respondent police has no serious objection for carrying out the necessary corrections in the said order.

4. In view of the above, we are inclined to correct the mistakes crept-in in the order dated 09.01.2023 passed in HCP No.1103 of 2022 and accordingly, the last paragraph of the said order will read as follows:-

“ In the result, the Habeas Corpus petition is allowed and the order of detention in C2/20/2022 dated 12.05.2022, passed by the 2nd respondent is set aside. The detenu viz., Sankar @ Sun Kathiravan aged 40 years S/o. Azhagappan is directed to be released forthwith, unless his detention is required in connection with any other case.”

5. The Registry is directed to carry out the aforesaid correction in the order as well as in the prayer portion with respect to the name of the detenu and issue a fresh order copy to all the parties.

(R.M.D.,J) (N.A.V.,J)
27.02.2023

rka

Note : Issue order copy today



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&
N.ANAND VENKATESH, J

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27.02.2023