

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2023

CORAM

The Honourable Mr. Justice **R.SURESH KUMAR**
and
The Honourable Mr. Justice **K.K.RAMAKRISHNAN**

H.C.P.(MD)No.1225 of 2022

Subbaiah

.. Petitioner

Vs.

State rep. by

1.The Additional Chief Secretary to Government,
Home, prohibition and Excise Department,
Fort St. George,
Chennai -9.

2.The Commissioner of Police,
Tirunelveli City,
Tirunelveli District.

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

4.The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli City.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records relating to the Detention Order passed by the 2nd respondent in Detention Order No. 56/BCDFGISSV/2022 dated 03.06.2022 and to quash the same and direct the respondents to produce the body or person of the detenu, Ponganesh, S/o. Subbaiah aged about 20 years, before this Court and set him at liberty, now detained at Central Prison, Palayamkottai, Tirunelveli.

For Petitioner : Mr.V.Jegadeesha Pandian
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

This Habeas Corpus Petition has been filed to quash the Detention Order dated 03.06.2022 of the 2nd respondent in No.56/BCDFGISSV/2022 and to direct the respondents to produce the body or person of the detenu, Ponganesh, S/o. Subbaiah aged about 20 years, before this Court and set him at liberty, now detained at Central Prison, Palayamkottai, Tirunelveli. The detenu has been arrested on 01.05.2022 pursuant to the ground case in Crime No.12/2022.

2. Assailing the said order, the learned counsel for the petitioner though has raised so many points/grounds, insofar as the ground of delay in considering the representation submitted on behalf of the detenu is concerned, though the representation had been sent to various authorities including the Secretary to Government, Home Department on 13.06.2022, through registered post that was considered and order of rejection was passed only on 21.07.2022. Therefore, there is a delay of more than one month in considering the representation given on behalf of the detenu on that ground itself, the impugned order is vitiated. Hence, he seeks indulgence of this Court.

3. In response to the same, the learned Additional Public Prosecutor appearing for the respondents has relied upon the proforma submitted by Home, Prohibition and Excise Department, where the details of various dates, as to when representation was received, when it was considered and decided have been stated. Accordingly, the representation dated 13.06.2022 was received by them on 07.07.2022; thereafter file was submitted on 18.07.2022 and at Ministry level, it was received on 20.07.2022 and

rejection was passed on 20.07.2022 and communicated on 21.07.2022.

4. We have considered the said submissions and have perused the materials placed before this Court.

5. Insofar as the consideration of the representation is concerned, the representation is dated 13.06.2022, but it is claimed that the respondents, ie., the authority, considered the representation as if that it has been received on 07.07.2022. However, on behalf of the petitioner, the postal receipt under which the representation dated 13.06.202 had been sent to various authorities, have been annexed, where it is stated that to all concerned authorities, the representation had been sent on 13.06.202 itself at about 2.30 p.m

6. When that being so and if it has been sent through registered post on 13.06.2022 itself, ultimately the said representation could have reached the addressee within a period of atleast maximum of three days. Therefore, at any stretch of imagination, it cannot be stated that they received only on 07.07.2022, for which, absolutely there is no explanation or reason on the

part of the authority concerned to consider the representation. Such a delay to the extent of more than 20 days, even after the receipt of representation itself is a huge delay, for which, since no explanation has been given that vitiate the right of the detenu and therefore, on that ground we feel that the impugned order can be interfered with. Accordingly, the impugned order is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.56/BCDFGISSV/2022 dated 03.06.2022 passed by the second respondent is set aside. The detenu, viz., Ponganesh, S/o.Subbaiah aged about 20 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(R.S.K.,J.) (K.K.R.K.,J.)
27.03.2023

Index : Yes/No
Internet : Yes
RR

To

- 1.The Additional Chief Secretary to Government,
Home, prohibition and Excise Department,
Fort St. George,
Chennai -9.
- 2.The Commissioner of Police,
Tirunelveli City,
Tirunelveli District.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.
- 4.The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli City.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

HCP(MD)No.1225 of 2022

**R.SURESH KUMAR,J.
and
K.K.RAMAKRISHNAN,J.**

RR

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