



HCP(MD)No.1875 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.07.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

H.C.P.(MD)No.1875 of 2022

Shahul Hameed

.. Petitioner /Father of the Detenu

Vs.

- 1.The Principal Secretary to Government,
Public (Law & Order-F) Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Kanniyakumari District at Nagercoil.
- 3.The Secretary to the Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block,
New Delhi – 110001.
- 4.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

.. Respondents



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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 of the Respondent No.2 in P.D.No.01/NSA/2022 dated 13.10.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Mussamil @ Samil @ Samil Khan, son of Shahul Hameed aged about 25 years, now confining at Palayamkottai Central Prison before this Court and set him at liberty forthwith

For Petitioner : Mr.R.Alagumani

For R-1, R-2 : Mr.A.Thiruvadikumar
and R-4 Additional Public Prosecutor

For R-3 : Mr.ARL.Sundaresan
Additional Solicitor General of India
assisted by
Mr.V.Malaiyendran
Central Government Standing Counsel

ORDER

(Order of the Court was made by M.S.RAMESH,J.)

The petitioner is the father of the detenu viz., Mussammil @ Samil @ Samil Khan, aged about 25 years, S/o.Shahul Hameed. The detenu has been detained by the second respondent by his order in P.D.No.01/NSA/2022 dated 13.10.2022, in exercise of the powers under Section 3(2) of the



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National Security Act, 1980 (hereinafter referred to as 'Act'). The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner, the learned Additional Public Prosecutor appearing for the respondents 1, 2 and 4 and the learned Additional Solicitor General of India appearing for the third respondent. 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 following grounds:

(i) the detaining authority has relied upon the order passed in CrI.M.P.No.1280/2019 dated 11.04.2019 and came to the conclusion that in a similar case bail has been granted and that there is likelihood of the detenu released on bail. The learned counsel submitted that the detaining authority was aware of the fact that the detenu filed bail application in the ground case and the same is pending. The learned counsel for the petitioner therefore submitted that the order relied upon by the detaining authority is



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not similar and there is non application of mind on the part of the detaining authority; and

(ii) 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 dated 22.10.2022 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. On carefully going through the detention order, it is seen that in the similar case bail order relied upon by the detaining authority in CrI.M.P.No. 1280/2019 dated 11.04.2019, bail has been granted by the learned Judicial Magistrate for the offences under Sections 153A, 295, 120B IPC and



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Section 125 of the Representation of the People Act. In the present case, the offences under Sections 307 and 436 IPC are triable by the Sessions Court and the bail is required to be filed and considered by the Sessions Court, whereas, the offences in the similar case would fall under the jurisdiction of the Magistrate Court and the similar case bail order has also been granted by the learned Judicial Magistrate. Hence, the order that was relied upon by the detaining authority cannot be considered to be an order passed in a similar case.

6. Further, Article 22(5) of the Constitution of India and Section 8(1) of the Act provides that the detaining authority shall communicate to the detenu the grounds on which the order has been made within five days from the date of detention and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

7. In the present case, the detention order in question was passed on 13.10.2022. The representation dated 22.10.2022 made by the petitioner to the State Government was received by them on 31.10.2022 and was considered only on 16.11.2022 and reply was sent to the petitioner on the



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same day. During the course of consideration of the representation, there was a delay of 13 days, after excluding the number of holidays.

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.



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11. In the subject case, admittedly, there is an inordinate and unexplained delay of 13 days in considering the representation by the State Government.

12. On both the grounds, the detention order suffers from non application of mind and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.

13. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.01/NSA/2022 dated 13.10.2022 passed by the second respondent is set aside. The detenu, viz., Mussammil @ Samil @ Samil Khan, S/o.Shahul Hameed, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.S.R.,J.) (M.N.K.,J.)
27.07.2023

NCC : Yes / No
Index : Yes / No
Lm/Yuva



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To

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Public (Law & Order-F) Department,
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Chennai – 600 009.
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- 4.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 5.The Joint Secretary to Government,
Public (Law and Order),
Fort St.George,
Chennai.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.S.RAMESH,J.
and
M.NIRMAL KUMAR,J.

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