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*H.C.P.(MD)No.1655 of 2021*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **06.09.2022**

CORAM:

**THE HONOURABLE MRS.JUSTICE J. NISHA BANU**

**and**

**THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH**

**H.C.P.(MD)No.1655 of 2021**

Kanthan

.. Petitioner

Vs.

1.The State of Tamil Nadu,  
Rep. by its Principal Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St. George,  
Chennai-600 009.

2.The District Collector / District Magistrate,  
Virudhunagar District,  
Virudhunagar.

3.The Superintendent of Prison,  
Central Prison,  
Madurai.

.. Respondents



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**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records relating to the detention order passed by the second respondent in Cr.M.P.No.14/2021 dated 06.10.2021 and quash the same and direct the respondents to produce the detenu Thiru.Lakshmanan, son of Kanthan, Male, aged about 18 years, who is detained at Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Pon Karthikeyan

For Respondents : Mr.A.Thiruvadikumar  
Additional Public Prosecutor

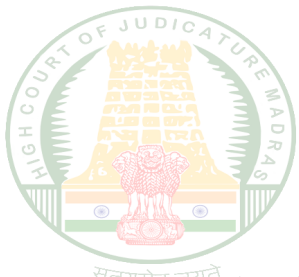
### **ORDER**

**J.NISHA BANU, J.**

**and**

**N.ANAND VENKATESH, J.**

The petitioner is the father of the detenu viz., Lakshmanan, son of Kanthan, aged about 18 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.14/2021 dated 06.10.2021 holding him to be a "Sexual Offender", as contemplated under Section



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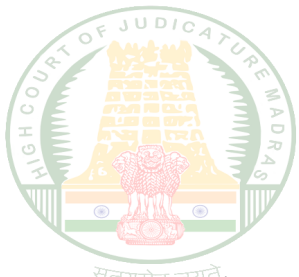
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2(ggg) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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.

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



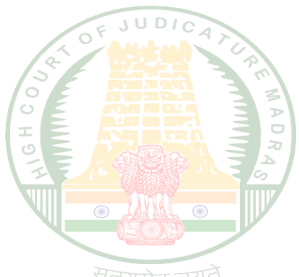
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though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The learned Additional Public Prosecutor submitted that there are totally two accused persons in this case and the detenu has been arrayed as A1 and A2 is stated to be a juvenile. It was further submitted that the investigation has been completed and final report was filed and it was taken on file by the POCSO Court, Srivilliputhur in Spl.S.C.No.102 of 2022 and the matter stands posted on 13.09.2022.

6. The Detention Order in question was passed on 06.10.2021. The petitioner made a representation dated -Nil-. Thereafter, remarks were called for by the Government from the Detaining Authority on 22.10.2021. The remarks were duly received on 27.10.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's



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representation on 29.11.2022.

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7. It is the contention of the petitioner that there was a delay of 5 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence there was an inordinate delay of 3 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 27.10.2021 and there was a delay of 32 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, 11 days were a Government Holiday and hence, there was inordinate delay of 21 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.



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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 3 days in submitting the remarks by the Detaining Authority and unexplained delay of 21 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.



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12. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.14/2021 dated 06.10.2021 passed by the second respondent is set aside. The detenu, viz., Lakshmanan, son of Kanthan, aged about 18 years, is directed to be released forthwith unless his detention is required in connection with any other case.

13. The information technology is posing a great challenge and it has a lot of impact on the mind of the teenagers. The case on hand is a text book case, where the detenu is aged about 18 years and the co-accused is a minor and they are now branded as "sexual offender". The teenagers, who are easily exposed to pornography even from their mobile phones, get confused and misled at an age where they are in the grips of hormonal changes and they indulge in activities without understanding its consequences. Once these teenagers are arrested and kept inside the prison, efforts must be taken to attend to their mental perversion. The purpose of confining a teenager in the prison is not to abandon him and throw him out of the main stream of the society and all steps must be taken to reform such a person. Hence, this Court suggests that the State Government must come



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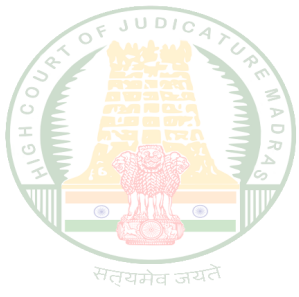
up with some mechanism whereby, offenders of this nature are being properly counselled when they are in prison and when they come out of the prison, they are reformed and they are able to lead a normal life. If this effort is not taken, a teenager will lose his entire life and there are all chances that he will become a hardened criminal and such a scenario will neither be helpful to the teenagers / or to the society.

**(J.N.B., J.) (N.A.V., J.)**

**06.09.2022**

Index : Yes/No  
Internet : Yes  
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1. The Director General of Police/ Director General of Prisons and Correctional Services,  
Prison Department,  
Government of Tamil Nadu,  
Chennai.
2. The Principal Secretary to Government,  
State of Tamil Nadu,  
Home, Prohibition and Excise Department,  
Fort St. George,  
Chennai-600 009.
3. The District Collector / District Magistrate,  
Virudhunagar District,  
Virudhunagar.
4. The Superintendent of Prison,  
Central Prison,  
Madurai.
5. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**J.NISHA BANU,J.**

**and**

**N.ANAND VENKATESH, J.**

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