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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.865 of 2015

S.Sathya

.. Petitioner

Vs.

1.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

2.The Secretary to the
Government,
Home, Prohibition and
Excise Department,
Secretariat,
Chennai-600 009.

3.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli City.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, directing the respondents to produce the detenu, namely, K.Shanmugam, aged about 29 years, son of Kombaiyah Thevar, before this Court who is now detained in the Central Prison, Palayamkottai, Tirunelveli in pursuant to the detention order passed by the 1st respondent in No.47/BCDFGISSSV/2015 dated 16.5.2015 and to call for the records and quash the same and release the detenu at liberty forthwith.

For Petitioner

: Mr.N.Mohideen Basha

For Respondents

: Mr.T.Mohan

Additional Public Prosecutor.

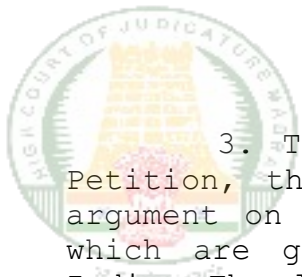
O R D E R

[Order of the Court was made by **V.S.RAVI,J**]

The petitioner is the wife of the detenu, namely Shanmugam. The detenu has been detained as per the order of the first respondent under Section 2(f) of the Tamilnadu Act 14 of 1982, branding him as "**Goonda**".

<https://hcservices.ecourts.gov.in/hcservices/>

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents and we have also perused the records carefully.



3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the Petitioner would mainly focus his argument on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon'ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

4. But, the learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, 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. We have considered the above submissions.

6. In this case, the Detention Order was passed on 16.05.2015. As against the same, the petitioner made a representation on 08.06.2015. The remarks were called for by the Government from the Detaining Authority on 16.06.2015. The remarks were received on 03.07.2015. Thereafter, the Government considered the issue and passed the order rejecting the representation on 15.07.2015. It is the contention of the petitioner that there was delay of thirteen days in submitting the remarks by the Detaining Authority and there was delay of six days on the part of the Government in considering the same.

7. Now, the question is as to whether on that score, the impugned order can be quashed.

8. In *Rekha Vs. State of Tamil Nadu*, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further 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 of 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/detenu would be sufficient to set aside the detention order.

10. In *Tara Chand Vs. State of Rajasthan and others*, [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 detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

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11. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of nineteen working days and therefore, the impugned detention order is liable to be quashed.



12. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order passed by the first respondent in his Detention order No.47/BCDFGISSSV/2015, dated 16.05.2015, is quashed. The detenu, by name, K.Shanmugam, aged about 29 years, son of Kombaiyah Thevar, is ordered to be set at liberty forthwith, if she is not required for detention in connection with any other case.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

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

3.The Inspector of Police,
Palayamkottai Police Station, Tirunelveli City.

4.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District. (in duplicate to communicate the detenu)

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S. N.Mohideen Basha, Advocate in SR.No 62570

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ORDER MADE IN
H.C.P (MD) No.865 of 2015

27.10.2015