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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

H.C.P.(MD)No.1027 of 2016

Selvi : Petitioner
Vs.

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

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

3.The Superintendent of Prison,
Special Prison for Women,
Madurai. : Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the records of the impugned order of detention in B.C.D.F.G.I.S.S.S.V.No.4/2016, dated 09.07.2016, on the file of the second respondent and quash the same as illegal and to direct the respondents to produce the detenue Pounthai, female, aged 58 years, wife of Devaraj, now detained at the Special Prison for Women, Madurai, before this Court and set her at liberty.

For Petitioner : Mr.R.Venkatesan
For Respondents : Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

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ORDER

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

The petitioner is the daughter of the detenue viz., Pounthai, Wife of Devaraj, aged about 58 years. The detenue has been detained, as per the order of the second respondent, dated 09.07.2016, under Section 2(e) of the Tamilnadu Act 14 of 1982, branding her as "Drug Offender". Challenging the same, she has come up with this Habeas Corpus Petition.

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2.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. 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. 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 detenue 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 09.07.2016. As against the same, the petitioner made a representation on 02.08.2016. The remarks were called for by the Government from the Detaining Authority on 09.08.2016. The remarks were received on 15.09.2016. Thereafter, the Government considered the issue and passed the order rejecting the representation on 27.09.2016. It is the contention of the petitioner that there was delay of 23 days in submitting the remarks by the Detaining Authority and there was delay of 6 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 detenue.

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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

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unexplained delay of three days in disposal of the representation made on behalf of the detenu/detenue 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.

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 29 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 second respondent, in his proceedings in B.C.D.F.G.I.S.S.S.V.No.4/2016, dated 09.07.2016, is quashed. The detenue, namely Pounthai, W/o.Devaraj, aged about 58 years, 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 Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2.The District Collector/District Magistrate,
Madurai District, Madurai.
3.The Superintendent of Prison,
Special Prison for Women, Madurai.
4.The Joint Secretary to Government,
(Public) Law and Order , Fort Saint George, Chennai-9
5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
SML
RL/6C/3P/SKS/RR/29.11.2016

Order made in
H.C.P.(MD) No.1027 of 2016

Dated:
17.11.2016

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