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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE B.GOKULDAS

H.C.P(MD)No.555 of 2016

J.Sahaya Kala Thangarani

: Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by The Secretary to Government,
Prohibition and Excise Department,
Fort St.George,
Chennai-9.

2.The District Magistrate and District Collector,
Kanyakumari District at
Nagercoi.

: 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 Subin, son of Jayachandran aged 22 years, before this Court now confined in the Central Prison, Palayamkottai and set him at liberty and to call for the records pertaining to the order of detention passed in P.D.No.19 of 2016, dated 16.04.2016, passed by the 2nd respondent and set aside the same.

For Petitioner : Mr.C.K.M.Appaji

For Respondents : Mr.C.Ramesh
Additional Public Prosecutor.

O R D E R

[Order of the Court was made by K.K.SASIDHARAN, J.]

This Habeas Corpus Petition is filed by the mother of the detenu -Subin, who is under detention, pursuant to the order passed by the second respondent dated 16.04.2016, in P.D.No.19/2016, under Section 2(f) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act, 1982, (Tamil Nadu Act 14 of 1982), read with the order issued by the Government in G.O.(D).No.24, Home Prohibition and Excise (XVI) Department, dated 18.01.2016, under



Sub-Section (2) of Section 3 of the said Act, branding him as "Goonda".

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 produced by the Detaining Authority.

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 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 opposed the Habeas Corpus Petition. 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. The Detention Order in question was passed on 16.04.2016. The petitioner made a representation on 30.05.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 01.06.2016. The remarks were duly received on 20.06.2016. Thereafter, the Government considered the matter and passed the order rejecting the representation on 30.06.2016.

6. It is the contention of the petitioner that there was a delay of 13 days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of 7 days in considering the representation.

7. In **Rekha Vs. State of Tamil Nadu, [2011 (5) SCC 244]**, the Hon'ble 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.

8. 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 very detention illegal.



9. In the subject case, admittedly, there is an inordinate and unexplained delay of 13 days in submitting the remarks by the Detaining Authority and 7 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

10. In the result, the impugned Detention Order, passed by the second respondent, in his proceedings in P.D.No.19/2016, dated 16.04.2016, is quashed. The detenu, namely, Subin, S/o.Jeyachandran, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

11. In the upshot, we allow the Habeas Corpus Petition.

Sd/

Assistant Registrar(AS)

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Sub Assistant Registrar

To

1.The Secretary to Government, State of Tamil Nadu,
Prohibition and Excise Department,
Fort St.George, Chennai-9.

2.The District Magistrate and District Collector,
Kanyakumari District at Nagercoi.

3.The Superintendent,
Central Prison, Palayamkottai.

4.The Joint Secretary to Government,
Public (Law & Order), Fort.St.George,
Chennai - 9.

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

+1cc to M/S.CKM.APPAJI, Advocate in SR.No.45254

Order made in
H.C.P (MD) No.555 of 2016
Dated: 18.08.2016

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