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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

AND

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

H.C.P.(MD)No.232 of 2017

K.Aberna

... Petitioner

Vs.

1.The State of Tamil Nadu represent by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

2.The District Collector/District Magistrate,
Collectorate,
Tuticorin District.

3.The superintendent of Central Prison,
Palayamkottai Central Prison,
Thirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the entire records, connected with the detention order of the second respondent in H.S(M) Confdl.No.58/16, dated 23.12.2016 and quash the same and direct the respondents to produce the detenu, by name, Kingston, son of Singarayan, aged about 46 years, who is detained in Central Prison, Palayamkottai, Tirunelveli District before this Court and set him at liberty forthwith.

For Petitioner	: Mr. S.Moorthy
For Respondents	: Mr.C.Mayilvahana Rajendran Additional Public Prosecutor.

O R D E R

[Order of the Court was made by M.V.MURALIDARAN, J.]

The petitioner is the wife of the detenu Kingston. The detenu has been detained by the 2nd respondent by order in H.S.(M) Confdl.No.58/2016, dated 23.12.2016, holding the detenu to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu
<https://hservices.courts.gov.in/hservices/> The said order is under challenge in this Habeas Corpus Petition.



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.

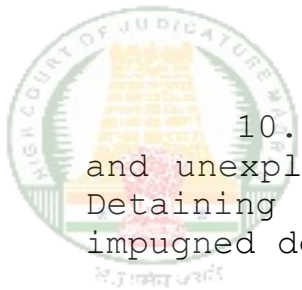
5. The Detention Order in question was passed on 23.12.2016. The petitioner made a representation on 26.12.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 11.01.2017. The remarks were duly received on 25.01.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 30.01.2017.

6. It is the contention of the petitioner that there was a delay of 8 days in submitting the remarks by the Detaining Authority 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 **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.

9. 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.



10. In the subject case, admittedly, there is an inordinate and unexplained delay of 8 days in submitting the remarks by the Detaining Authority in considering the representation. The impugned detention order is, therefore, liable to be quashed.

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11. In the result, the Detention Order, passed by the second respondent, in his proceedings in H.S(M)Confdl.No.58/16, dated 23.12.2016, is quashed. The detenu, namely, Kingston, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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

Sd/-

ASSISTANT REGISTRAR (AD-II)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
2. The District Collector/District Magistrate,
Collectorate, Tuticorin District.
3. The superintendent of Central Prison,
Palayamkottai Central Prison,
Thirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Joint Secretary to Government Public (Law & Order)
Fort St. George, Chennai-9.

+1 CC TO MR.S.MOORTHY, ADVOCATE, SR NO.57030

Ns/RR

MAS/KP/SAR2:02.06.2017:3P-7C

H.C.P. (MD) No.232 of 2017
23.05.2017