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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **13.04.2017**
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P(MD)No.1521 of 2016

R.Utchimahali : Petitioner
Vs.

1.The Principal Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai-9.

2.The Chairman,
Advisory Board,
Singaravelar Maligai,
Ground Floor (Backside Entrane),
Chennai Collectorate,
No.32, Rajajisalai,
Chennai - 600 001.

3.The District Collector/District Magistrate,
Tirunelveli District,
Tirunelveli.

4.The Superintendent of Central Prison,
Palayamkottai,
Tirunelveli District.

5.The Inspector of Police,
Surandai Police Station (Circle),
Tirunelveli District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to calling for the records relating to the impugned detention order in M.H.S.Confdl No.155 of 2016 dated 28.10.2016 passed by the 3rd respondent and quash the same as illegal and consequently direct the respondents to set petitioner's husband detenue namely Rajendran @ Rasu, S/o.Shunmugiah Thevar, aged about 44 years at liberty, who is confined in Central Prison, Palayamkottai.

For Petitioner : Mr.V.Angusamy

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

For Respondents : Mr.C.Ramesh

Additional Public Prosecutor.



O R D E R

[Order of the Court was made by T.S.SIVAGNANAM, J.]

The petitioner is the wife of the detenu - Rajendran @ Rasu, S/o Shunmugiah, aged about 44 years. The detenu has been detained by the third respondent by his order in M.H.S.Confdl No:155/2016, dated 28.10.2016, holding him to be a "Goonda", as contemplated under Section 2(f) 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 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 28.10.2016. The petitioner made a representation dated 04.11.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 08.11.2016. The remarks were duly received on 18.11.2016. Thereafter, the Government considered the matter and passed the order rejecting the representation on 22.12.2016.

6. It is the contention of the petitioner that there was a delay of 8 days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of 21 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 **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.

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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 and 21 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Detention Order, passed by the third respondent, in his proceedings in M.H.S.Confdl No.155 of 2016, dated 28.10.2016 is quashed. The detenu, namely, Rajendran @ Rasu, 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

/True copy/

Sub Assistant Registrar

To

1.The Principal Secretary to Government,
Home Prohibition and Excise Department,
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2.The Chairman,
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3.The District Collector/District Magistrate,
Tirunelveli District,
Tirunelveli.

4.The Superintendent of Central Prison,
Tirunelveli District.



5.The Joint Secretarty to Government of Tamil Nadu,
Public (Law & order),
Fort. Saint George, Chennai-9.

6.The Inspector of Police,
Surandai Police Station (Circle),
Tirunelveli District.

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

+1 cc to Mr.V.Angusamy, Advocate, Sr.No.52146

Ssl/myr

AE/JC/SAR4/26.04.2017/4P/9C

H.C.P (MD) No.1521 of 2016
Dated:**13.04.2017**