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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P(MD)No.1663 of 2016

Prakash Kumar

: Petitioner

Vs.

1.State represented by,
The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

2.The Principal Secretary to Government,
Home, Prohibition and Excise (xiv) Department,
Secretariat,
Chennai - 600 009.

3.The State represented by,
The Superintendent of Prison,
Special Prison for Women,
Trichy District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the records from the first respondent in M.H.S.Confdl.No.162/2016, dated 18.11.2016 by setting aside the said order of detention passed by the first respondent and setting the detenu Priya aged about 24, W/o.Prakash Kumar, at liberty now detained in the Special Prison for Women, Trichy, Trichy District.

For Petitioner
For Respondents

: Mr.K.Prabhu
: 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 husband of the detenu - Priya, aged about 24 years. The detenu has been detained by the first respondent by his order in M.H.S.Confdl No.162/2016, dated 18.11.2016, 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.

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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.

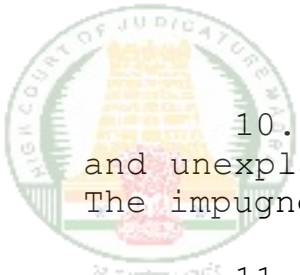
5. The Detention Order in question was passed on 18.11.2016. The petitioner made a representation dated 24.11.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 05.12.2016. The remarks were duly received on 07.12.2016. Thereafter, the Government considered the 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 9 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.

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 9 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 first respondent, in his proceedings in M.H.S.Confdl No.162/2016, dated 18.11.2016, is quashed. The detenu, namely, Priya, is ordered to be set at liberty forthwith, if she is not required for detention in connection with any other case.

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

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector and District Magistrate,
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Tirunelveli.
2. The Principal Secretary to Government,
Home, Prohibition and Excise (xiv) Department,
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Chennai - 600 009.
3. The State represented by,
The Superintendent of Prison,
Special Prison for Women, Trichy,
Trichy District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.PRABHU Advocate in SR. No.53305
JIKR
JS/MMS/4.05.2017/3P-6C

ORDER MADE IN
H.C.P. (MD) .No.1663 of 2016
Dated:20.04.2017