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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P(MD)No.1666 of 2016

P.Gomathivinayagam

... 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.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records from the first respondent in M.H.S.Confdl.No.164/2016 dated 18.11.2016 by setting aside the said order of detention passed by the first respondent and setting the detenu Gomathi @ Vijaya aged about 57, W/o. Gomathivinayagam, at liberty now detained in the Special Prison for Women, Trichy, Trichy District.

For Petitioner	: Mr.K.Prabhu
For Respondents	: Mr.C.Ramesh, Additional Public Prosecutor

ORDER

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

The petitioner is the husband of the detenu, aged about 57 years. The detenu has been detained by the first respondent by his order in M.H.S.Confdl.No.164/2016 dated 18.11.2016, holding her to be a "Goonia" 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 appearing 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 appearing for the respondents 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.

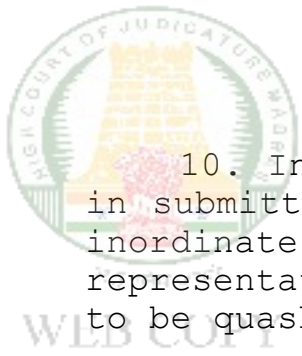
5. The Detention Order in question was passed on 18.11.2016. The petitioner made a representation dated 24.11.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 05.12.2016. The remarks were duly received on 07.12.2016. Thereafter, the Government considered the matter and passed the order rejecting the representation on 22.12.2016.

6. It is the contention of the petitioner that though there was no delay in submitting the remarks by the Detaining Authority, there was a delay of 9 days in considering the representation.

7. In *Rekha Vs. State of Tamil Nadu* reported in 2011 (5) SCC 244, the Honourable 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* reported in 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* reported in 1986 (2) SCC 331, the Honourable 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, though there is no delay in submitting the remarks by the Detaining Authority, 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 Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.164/2016 dated 18.11.2016, passed by the first respondent is set aside. The detenu, namely, Gomathi @ Vijaya, wife of Gomathivinayagam, aged about 57 years, is directed to be released forthwith unless his detention is required in connection with any other case.

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

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. 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 Superintendent of Prison, Special Prison for Women, Trichy, Trichy District.
4. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.K.PRABHU, Advocate SR.No. 53308

H.C.P (MD) No.1666 of 2016
21.04.2017

JM/JC/02.05.2017/3P/6C