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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **C.T.SELVAM**
AND
THE HONOURABLE MR.JUSTICE **A.M.BASHEER AHAMED**

H.C.P(MD)No.202 of 2018

Pandiammal : Petitioner

Vs.

1. The Secretary to the Government,
   Home, Prohibition and Excise Department,
   Secretariat, St. George Fort,
   Chennai - 600 009.

2. The District Collector and District Magistrate,
   Theni District, Theni.

3. The Superintendent,
   Central Prison, Madurai.

4. The Inspector of Police,
   Thenkarai Police Station,
   Theni 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 pertaining to the order of detention passed by the 2nd respondent vide his proceedings in Detention Order No.5/2018 dated 31.01.2018 and quash the same and consequently set the detenue by name Jeyapal, S/o.Mayandi (Male, aged 52 years) who is presently confined at Central Prison, Madurai.

For Petitioner : Mr.Pon.Manoharan
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor.

O R D E R
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[Order of the Court was made by C.T.SELVAM, J.]

The petitioner is the wife of the detenu - Jeyapal, S/o.Mayandi , Male, aged 52 years. The detenu has been detained by the second respondent by his order in Detention Order No.5/2018, holding him to be a "Drug Offender", as contemplated under Section

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of 2(e) of the 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 31.01.2018. The petitioner made a representation dated 31.01.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 16.02.2018. The remarks were duly received on 02.03.2018. Thereafter, the Government considered the matter and passed the order rejecting the representation on 09.03.2018.

6. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of 5 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 10 days in submitting the remarks by the Detaining Authority and 5 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 second respondent, in his proceedings in Detention Order No.5/2018 dated 31.01.2018, is quashed. The detenu, namely, Jeyapal, S/o.Mayandi, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

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

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
   Home, Prohibition and Excise Department,
   Secretariat, St. George Fort,
   Chennai - 600 009.
2. The District Collector and District Magistrate,
   Theni District, Theni.
3. The Superintendent,
   Central Prison, Madurai.
   (In duplicate for communication to Detenu)
4. The joint Secretary to Government,
   Public(Law & order),
   Fort St.George, Chennai-9.
5. The Inspector of Police,
   Thenkarai Police Station,
   Theni District.
6. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

Sji/NB
AE/SV MMS/SAR1/15.05.2018/3P/8C

ORDER MADE IN
H.C.P(MD)No.202 of 2018
Dated: **24.04.2018**

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