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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M. NIRMAL KUMAR

H.C.P. No. 778 of 2019

A.Moorthi

... Petitioner

-vs-.

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

2.Commissioner of Police,
Greater Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus in connection with the order of detention passed by the second respondent dated 02.04.2019 in Memo No.161/BCDFGISSSV/2019 against the petitioner's mother in Anjalai, Female, aged 42 years, S/o. Sankar, who is confined at Special Prison for Women, Puzhal, Chennai and set aside the same and direct the respondents to produce the detainee before this Court and set her at liberty.

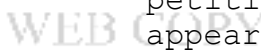
For Petitioner : Mr.S.Senthil Vel

For Respondents : Mr.R.Prathap Kumar
Addl.Public Prosecutor

ORDER

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

The petitioner is the son-in-law of the detainee, Anjalai, Wife of Anandhan, aged 42 years. The detenu has been detained by the second respondent by his order in Memo No.161/BCDFGISSSV/2019, dated 02.04.2019, holding to be a "Bootlegger", as contemplated under Section 2(b) of Tamil Nadu



2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

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 detainee and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

6. It is the contention of the petitioner that there was a delay of 6 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 4 days in submitting the remarks. It is the contention of the petitioner that the remarks were received on 20.05.2019 and there was delay of 11 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 2 days were Government Holidays, hence, there was inordinate delay of 9 days in considering the representation. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.06.2019.

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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 detainee.

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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*, reported in 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 4 days in submitting the remarks and 9 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. 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 Memo No.161/BCDFGISSSV/2019, dated 02.04.2019 passed by the second respondent is set aside. The detainee, Anjalai, Wife of Anandhan, aged 42 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To:

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



2. The Commissioner of Police,
Greater Chennai.

3. The Superintendent,
Special Prison for Women, Puzhal, Chennai.

4. The Joint Secretary to Government,
Public (Law & Order), Fort St. George, Chennai-9.

5. The Public Prosecutor,
High Court, Madras.

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