

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

H.C.P. No. 1221 of 2020

Nasim Baigam

... Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai -9.
 - 2.The District Magistrate and District Collector,
Tiruppur District, Tiruppur.
 - 3.The Superintendent of Prison,
Central Prison, Coimbatore.
 - 4.The Superintendent of Police,
Tiruppur District, Tiruppur.
 - 5.The Inspector of Police,
Kamanaickenpalayam Police Station,
Tiruppur District.
- Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the entire records leading to the detention of the petitioner's son Muhammad Ishra Khan @ Ishra, son of Muhammad Ikval Khan, male aged 31 years is presently lodged in Central Prison, Coimbatore at Coimbatore and has been detained under Act 14/82 as a Goonda vide detention order dated 16.06.2020 on the file of the 2nd respondent herein, made in Cr.M.P. No. 12/Goonda/2020 and quash the same and consequently, direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Coimbatore.

For Petitioner : Mr.M.Rajavelu

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 mother of Muhammad Ishra Khan @ Ishra, son of Muhammad Ikval Khan, aged 31 years, who is the detenu. The detenu has been detained by the second respondent by his order in Cr.M.P. No. 12/Goonda/2020 dated 16.06.2020, 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 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.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing 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 16.06.2020. The petitioner made a representation on 08.07.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 23.07.2020. The remarks were duly received on 17.08.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 04.09.2020.

6. It is the contention of the petitioner that there was a delay of 25 days in submitting the remarks by the Detaining

Authority, of which 8 days were Government Holidays and hence there was an inordinate delay of 17 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 17.08.2020 and there was a delay of 17 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 4 days were Government Holidays, hence, there was inordinate delay of 13 days in considering the representation.

7. In *Rekha vs. State of Tamil Nadu* (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* (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 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, there is an inordinate and unexplained delay of 17 days in submitting the remarks by the Detaining Authority and unexplained delay of 14 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 Cr.M.P. No. 12/Goonda/2020 dated 16.06.2020, passed by the second respondent is set aside. The detenu, namely, Muhammad Ishra Khan @ Ishra, son of Muhammad Ikval Khan, aged 31 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS)

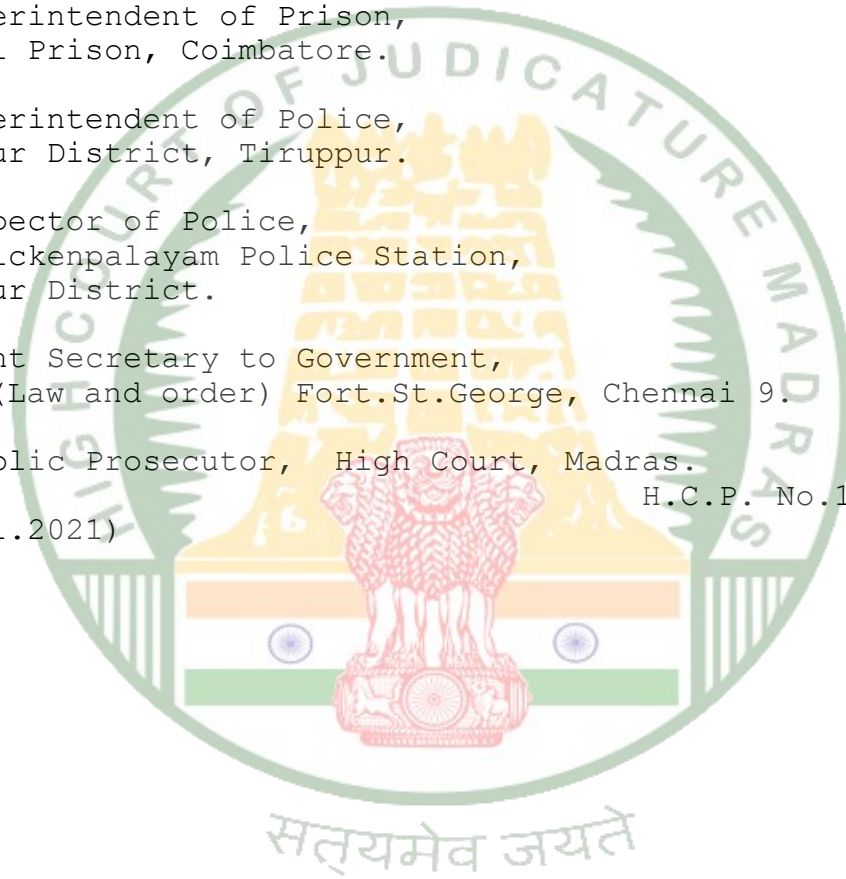
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Sub Assistant Registrar

mmi/ssm

To

- 1.The State of Tamil Nadu, Rep. By its
Secretary to the Government,
Home, Prohibition and Excise Department,
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 - 2.The District Magistrate and District Collector,
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 - 5.The Inspector of Police,
Kamanaickenpalayam Police Station,
Tiruppur District.
 - 6.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.
 - 7..The Public Prosecutor, High Court, Madras.
- A.SK(20.01.2021) H.C.P. No.1221 of 2020



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