

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.07.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

H.C.P.No.277 of 2021

N.Nazreen Banu

.. Petitioner

Vs.

1.The Addl. Chief Secretary to Govt.,
Home, Prohibition and Excise Department
Secretariat, Chennai-9

2.The Commissioner of Police
Greater Chennai
O/o.The Commissioner of Police
(Goondas Section)
Vepery, Chennai-7

3.The Superintendent of Prison
Central Prison, Puzhal
Chennai

4.The Inspector of Police
M-1 Madhavaram Police Station
Chennai 68

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records of the detention order in BCDFGISSSV No.489/2020, dated 30.11.2020, on the passed by the 2nd respondent herein and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set the detenu S.Nazrudeen @ Nazeer, S/o.Salavudeen, aged 28 years and set him at liberty forthwith.

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For Petitioner : Mr.C.C. Chellappan

For Respondents: Mr.R.Muniyapparaj
Government Advocate (Crl. Side)

O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner is the wife of the detenu viz., S.Nazrudeen @ Nazeer, S/o.Salavudeen, aged 28 years. The detenu has been detained by the 2nd respondent by his order dated 30.11.2020 in BCDFGISSSV No.489/2020, 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 Government Advocate (Crl. Side) 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 Government Advocate (Crl. Side) 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 Government Advocate (Crl. Side), 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 30.11.2020. The petitioner made a representation on 12.12.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.12.2020. The remarks were duly received on 17.12.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 11.01.2021.

6. It is the contention of the petitioner that there was a delay of 2 days in submitting the remarks by the Detaining Authority, of which there was no Government Holiday and hence, there was a delay of 2 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 17.12.2020 and there was a delay of 22 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 8 days were Government Holidays, hence, there was an inordinate delay of 14 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*, 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 2 days in submitting the remarks by the Detaining Authority and 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.

In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSV No.489/2020, dated 30.11.2020, passed by the 2nd respondent is set aside. The detenu viz., S.Nazrudeen @ Nazeer, S/o.Salavudeen, aged 28 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

gya

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

To

1.The Addl. Chief Secretary to Govt.,
Home, Prohibition and Excise Department
Secretariat, Chennai-9.

2.The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai-9.

3.The Commissioner of Police
Greater Chennai
O/o.The Commissioner of Police
(Goondas Section)
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Chennai.

5.The Inspector of Police
M-1 Madhavaram Police Station
Chennai 68

.The Public Prosecutor
High Court, Madras.

H.C.P.No.277 of 2021

SSV(CO)
EU 6.7.2021

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