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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Ms. Justice R.N.MANJULA

H.C.P.No.407 of 2021

S.Rajeshwari ...Petitioner

Vs.

1. Government of Tamil Nady represented by
   The Secretary to Home Department,
   Secretariat, Fort St.George,
   Chennai-600 009.

2. The District Collector and District Magistrate,
   Dharmapuri District,
   Dharmapuri – 636 705.

3. The Superintendent of Prison,
   Central Prison, Salem – 636 007.

4. The Superintendent of Police,
   Dharmapuri – 635 202.

5. The Inspector of Police,
   Dharmapuri Town Police Station,
   Dharmapuri – 636 701.
   (Crime No.2155/2020)

6. The Inspector of Police,
   Krishanpuram Police Station,
   Dharmapuri District – 635 202.
   (Crime No.950/2020)

7. The Inspector of Police,
   Mathikonpalayam Police Station,
   Dharmapuri District – 636 701.
   (Crime No.1002/2020) ...Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records

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in S.C.No.12/2020 dated 29.12.2020 on the file of the 2nd respondent herein and quash the same as illegal and further direct the respondents to produce the detenu Pandidurai, son of Senthil Pandi, aged about 23 years, now confined in Central Prison, Salem, before this Court and set aside the same and set him at liberty.

For Petitioner : Mrs.R.Rajavigneshwari

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

ORDER

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

The petitioner is the mother of the detenu Pandidurai, son of Senthil Pandi, aged about 23 years. The detenu has been detained by the second respondent by his order in S.C.No.12/2020 dated 29.12.2020, 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.

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5. The Detention Order in question was passed on 29.12.2020. The petitioner made a representation on 07.01.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 05.02.2021. The remarks were duly received on 15.02.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 27.02.2021.

6. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining Authority, of which, 4 days were Government Holidays and hence there was an inordinate delay of 6 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 15.02.2021 and there was a delay of 12 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, 3 days were Government Holidays, hence, there was an inordinate delay of 9 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 6 days in submitting the remarks by the Detaining Authority and unexplained delay of 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.

In the result, the Habeas Corpus Petition is allowed and the order of detention in S.C.No.12/2020 dated 29.12.2020, passed by the second respondent is set aside. The detenu, viz., Pandidurai, son of Senthil Pandi, aged about 23 years, is

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directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nsd
To
1. The Secretary to Home Department,
   Secretariat, Fort St.George,
   Chennai-600 009.

2. The District Collector and District Magistrate,
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   Dharmapuri - 636 705.

3. The Superintendent of Prison,
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   Dharmapuri District - 635 202.

7. The Inspector of Police,
   Mathikonpalayam Police Station,
   Dharmapuri District - 636 701.

8. The Joint Secretary to Government of Tamil Nadu,
   Public, Law and Order Department,
   Secretariat, Chennai - 9.

9. The Public Prosecutor,
   High Court, Madras.

+1 CC to Mr.Jimraj Milton, Advocate, Sr.38667.

H.C.P.No.407 of 2021

MG(CO)
LS(12/08/2021)

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