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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.08.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Ms.JUSTICE R.N.MANJULA

H.C.P.No.480 of 2021

Padma .. Petitioner/Detenu's Wife

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St. George, Chennai-9

2.The District Collector and District Magistrate
O/o.The District Collector and District Magistrate
Cuddalore District
Cuddalore

3.The Superintendent
Central Prison, Cuddalore District

4.The Superintendent of Police
O/o.The Superintendent of Police
Cuddalore District, Cuddalore

5.The Inspector of Police
Prohibition Enforcement Wing
Panruti .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS calling for the entire records relating to the impugned order of detention passed by the 2nd respondent in C3/D.O./09/2021 dated 10.03.2021 and set aside the same and consequently direct the respondents to produce the detenu viz., Chinnaiyan, aged about 60 years, S/o.Manikannu, now confined at Central Prison, Cuddalore before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Saravanakumar

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

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O R D E R

[Order of the Court was made by R.N.MANJULA, J.]

The petitioner is the wife of the detenu viz., Chinnaiyan, aged about 60 years, S/o.Manikannu. The detenu has been detained by the 2nd respondent by his order dated 10.03.2021 in C3/D.O./09/2021, holding him to be a "BOOTLEGGER", as contemplated under Section 2(b) 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) strongly 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 10.03.2021. The petitioner made a representation on 15.04.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 20.04.2021. The remarks were duly received on 11.05.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 07.06.2021.

6. It is the contention of the petitioner that there was a delay of 21 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holidays and hence, there was an inordinate delay of 15 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 11.05.2021 and there was a delay of 26

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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 9 days were Government Holidays, hence, there was inordinate delay of 17 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 15 days in submitting the remarks by the Detaining Authority and unexplained delay of 17 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 C3/D.O./09/2021 dated 10.03.2021, passed by the 2nd respondent is set aside. The detenu viz., Chinnaiyan, aged about 60 years, S/o.Manikannu, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

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To

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Home, Prohibition and Excise Department
Secretariat, Fort St. George, Chennai-9

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Cuddalore District, Cuddalore

3.The Superintendent
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4.The Superintendent of Police
O/o.The Superintendent of Police
Cuddalore District, Cuddalore

5.The Inspector of Police
Prohibition Enforcement Wing
Panruti

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

7.The Public Prosecutor
High Court, Madras

H.C.P.No.480 of 2021

SJ(CO)
GMY(17/08/2021)

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