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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE S.SRIMATHY

H.C.P.No.652 of 2021

Benazir Fathima
W/o.Ansar Ali

...Petitioner

Vs.

1. State of Tamil Nadu
represented by
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
O/o.The Commissioner of Police,
Vepery, Chennai - 600 007.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Inspector of Police,
Team 29,
Central Crime Branch,
Chennai.

...Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus seeking to quash the detention order No.46/BCDFGISSSV/2021 dated 13.02.2021 passed by the second respondent against the detenu Ansar Ali s/o.Rasheed Ali, aged about 44 years, under Act 14 of 1982, who is now detained as Cyber Law Offender, in Central Prison, Puzhal II, Chennai and to produce the body of the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor



ORDER

[Order of the Court was made by S.SRIMATHY, J]

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The petitioner is the wife of the detenu viz., Ansar Ali s/o.Rasheed Ali, aged about 44 years. The detenu has been detained by the second respondent by his order in No.46/BCDFGISSSV/2021 dated 13.02.2021, holding him to be a "Cyber Law Offender", as contemplated under Section 2(bb) of the 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 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 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 13.02.2021. The petitioner made a representation dated 19.03.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 23.03.2021. The remarks were duly received on 26.03.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 15.04.2021.

6. It is the contention of the petitioner that there was a delay of 2 days in submitting the remarks by the Detaining Authority. It is the further contention of the petitioner that the remarks were received on 26.03.2021 and there was a delay of 13 days in considering the representation by the Hon'ble Minister for Electricity, P&E after the Deputy Secretary dealt



with it, of which 5 days were Government holidays. Hence, there was inordinate delay of 10 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 2 days in submitting the remarks by the Detaining Authority and unexplained delay of 8 days in considering the representation by the Hon'ble Minister for Electricity, P&E. 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 No.46/BCDFGISSSV/2021 dated 13.02.2021 passed by the second respondent is set aside. The detenu, viz., Ansar Ali s/o.Rasheed Ali, aged about 44 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm



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

- +1cc to Mr.S.Sivakumar, Advocate, S.R.No.54563

RLD[co]
NSK 10/11/2021