WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

Coram

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

H.C.P.No.775 of 2021

Jagan@ Jaganraj ...Petitioner/ Husband of the Detenue

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Commissioner of Police/
Detaining authority,
City police officer,
Huzur Road,
Coimbatore City,
Coimbatore -18

3.The Superintendent of Prison,
Special Prison for Women – Coimbatore,
Coimbatore District.

4. State represented by
The Inspector of Police,
D-1 Ramanathapuram Police Station,
Coimbatore District. .. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records, relating to the petitioner's Wife detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 11.02.2021 on the file of the second respondent herein made in proceedings Memo C.No.07/G/IS/2021, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's Wife viz., J. Vinaya, W/o. Jaganraj, aged 35 years, before this Court and set the petitioner's wife at liberty from detention, now the petitioner's wife detained at Central Prison, Coimbatore.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

For Petitioner : Mr.W. Camyles Gandhi

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 husband of the detenue J.Vinaya, W/o. Jaganraj, aged 35 years. The detenue has been detained by the second respondent by his order in C.No.07/G/IS/2021, dated 11.02.2021, holding her to be a "Sexual Offender", as contemplated under Section 2(ggg) 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 detenue 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 11.02.2021. The petitioner made a representation on 05.03.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 08.03.2021. The remarks were duly received on 12.03.2021. 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 4 days in submitting the remarks by the Detaining Authority, of which, there was no Government Holiday and hence there was an inordinate delay of 4 days in submitting the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

remarks. It is the further contention of the petitioner that the remarks were received on 12.03.2021 and there was a delay of 31 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, 11 days were Government Holidays, hence, there was an inordinate delay of 20 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 detenue.

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 detenue 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 4 days in submitting the remarks by the Detaining Authority and unexplained delay of 20 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 C.No.07/G/IS/2021, dated 11.02.2021, passed by the second respondent is set aside. The detenue, viz., J.Vinaya, W/o. Jaganraj, aged 35 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

nsd/tri

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

To

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai-600 009.

2. The Commissioner of Police/
Detaining authority,
City police officer,
Huzur Road,
Coimbatore City,
Coimbatore -18

3.The Superintendent of Prison,
Special Prison for Women – Coimbatore,
Coimbatore District.

4.The Inspector of Police,
D-1 Ramanathapuram Police Station,
Coimbatore District.

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

6.The Public Prosecutor,
High Court, Madras.

H.C.P.No.775 of 2021

PM(CO)
SB(06/09/2021)

https://hcservices.ecourts.gov.in/hcservices/