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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2021

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

H.C.P.No.814 of 2021

Nageshwari ...Petitioner/Mother of the detenue
Vs.

1. State of Tamil Nadu
Rep. by its Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009
2. The District Magistrate & District Collector
Tiruvallur District
Tiruvallur
3. The Inspector of Police
Vellavedu Police Station
Tiruvallur District
4. The Superintendent of Prison
Central Prison - II
Puzhal, Chennai 600 066
5. The Superintendent of Police
Thiruvallur District
Thiruvallur

...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 detention order in Memo BCDFGISSSV No.46/2021 dated 08.04.2021 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Thiru. Ashwinkumar @ Ashwin, S/o Arivazhagan, aged about 23 years, the detenu herein, now confined in the Central Prison, Puzhal, Chennai, before this Court and set the petitioner's son Thiru.Ashwinkumar @ Ashwin, at liberty.



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For petitioner : Mr. R. Muthukumar

For respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

O R D E R

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

The petitioner is the wife of the detenu viz., Ashwinkumar @ Ashwin, S/o.Arivazhagan, aged about 23 years. The detenu has been detained by the 2nd respondent by his order dated 08.04.2021 in BCDFGISSSV No.46/2021, 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 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 08.04.2021. The petitioner made a representation on 08.05.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 11.05.2021. The remarks were duly received on 26.05.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.07.2021.

6. It is the contention of the petitioner that there was a delay of 15 days in submitting the remarks by the Detaining



Authority, of which 5 days were Government Holidays and hence, there was an inordinate delay of 10 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 26.05.2021 and there was a delay of 4 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 2 days were Government Holidays, hence, there was a delay of 2 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 10 days in submitting the remarks by the Detaining Authority and a delay of 2 days in considering the representation by the Hon'ble Minister for Home, 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 BCDFGISSSV No.46/2021, dated 08.04.2021, passed by the 2nd respondent is set aside. The detenu viz., Ashwinkumar @ Ashwin, S/o.Arivazhagan, aged about 23 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar



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To

- 1 The Secretary to Government
Home, Prohibition and Excise Department
Government of Tamil Nadu
Secretariat, Chennai-600 009
- 2 The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai-9
- 3 The District Magistrate & District Collector
Tiruvallur District
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- 4 The Inspector of Police
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High Court, Madras

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NSK 16/11/2021