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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.892 of 2021

Jaithun bi

...Petitioner

Vs.

1 The State of Tamilnadu,
Represented by its Secretary to the Government,
Prohibition and Excise Department,
Fort St. George,
Chennai 600 009.

2. The Commissioner of Police,
Coimbatore City,
Coimbatore.

3. The Superintendent of Central Prison,
Coimbatore.

4. The Inspector of Police,
D-3, Police Station,
Podanur,
Coimbatore.

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the entire records of the Second Respondent in C.No.19/G/IS/2021 dated 24.04.2021 and quash the same and thereby directing the respondents to produce my son S.Mohammed Azarudeen, aged about 22 years, S/o. Sulthan, now detained in Central Prison, Coimbatore, before this Hon'ble Court and set him at liberty forthwith.

For petitioner : Mr. L. Rajendran

For respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu herein. The detenu has been detained by the 2nd respondent by his order dated



24.04.2021 in C.No.19/G/IS/2021, holding him to be a "Drug Offender", as contemplated under Section 3(1) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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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 filed his counter affidavit and 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 24.04.2021. The petitioner made a representation on 07.05.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 11.05.2021. The remarks were duly received on 18.05.2021. 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 7 days in submitting the remarks by the Detaining Authority, of which 3 days were Government Holidays and hence, there was an inordinate delay of 4 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 18.05.2021 and there was a delay of 69 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 21 days were Government Holidays, hence, there was a delay of 48 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.

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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 delay of 4 days in submitting the remarks by the Detaining Authority and an inordinate and unexplained delay of 48 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 C.No.19/G/IS/2021 dated 24.04.2021, passed by the 2nd respondent is set aside. The detenu S.Mohammed Azarudeen, aged about 22 years, S/o. Sulthan, 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

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To

- 1 The Secretary to the Government,
Prohibition and Excise Department of Tamil Nadu,
Fort St. George, Chennai 600 009.
- 2 The Joint Secretary to Government,
Public, Law and Order Department,
Secretariat, Chennai 600 009.
3. The Commissioner of Police,
Coimbatore City, Coimbatore.



4. The Superintendent of Central Prison,
Coimbatore.

5. The Inspector of Police,
D-3, Police Station,
Podanur, Coimbatore.

6 The Public Prosecutor,
High Court, Madras.

+1cc Mr.L.Rajendran, Advocate, Sr.No.58296

H.C.P.No.892 of 2021

GJ(CO)
SB(16/11/2021)