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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.NO. 1035 OF 2021

R.Uma

...Petitioner

Vs.

1. The Secretary to the Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Chennai.
3. The Inspector of Police,
S-6 Sankar Nagar Police Station,
Chennai.
4. The Superintendent of Police,
Central Prison,
Puzhal Chennai.

...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 connected with the order of the 2nd respondent herein in Memo No.156/BCDFGISSSV/2021, dated 03.06.2021 passed against the petitioner's son the detenu namely Gopinath @ Gopi, Son of Ramesh, aged about 24 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same. Consequently, directing the respondents herein to produce the body and person of the detenu before this Hon'ble Court and set him at liberty.

For petitioner : Mr.S.Raja

For respondents : Mr.R.Muniyapparaj,
Additional Public Prosecutor.



O R D E R

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

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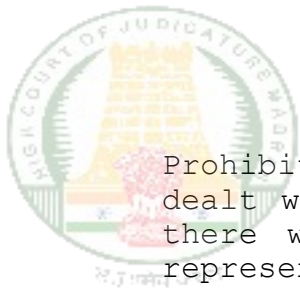
2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

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 03.06.2021. The petitioner made a representation on 30.06.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 05.07.2021. The remarks were duly received on 12.07.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 09.08.2021.

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 2 days were Government Holidays and hence, there was a delay of 5 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 12.07.2021 and there was a delay of 28 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 9 days were Government Holidays, hence, there was an unexplained delay of 19 days in considering the representation.

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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 5 days in submitting the remarks by the Detaining Authority and an unexplained delay of 19 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.156/2021, dated 03.06.2021, passed by the 2nd respondent is set aside. The detenu Gopinath @ Gopi, male, aged 24 years, S/o. Ramesh, is directed to be released forthwith, unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mtl



To

1. The Secretary to the Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Department,
Secretariat, 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,
Greater Chennai,
Chennai.
4. The Inspector of Police,
S-6 Sankar Nagar Police Station,
Chennai.
5. The Superintendent of Police,
Central Prison,
Puzhal Chennai.
6. The Public Prosecutor,
High Court, Madras.

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GSM(CO)
PM/22/12/2021