IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

Coram

The Hon'ble Mr. Justice P.N.PRAKASH
and
The Hon'ble Mr. Justice V.SIVAGNANAM

H.C.P. No. 1650 of 2020

Saraswathi ..Petitioner

Vs

1. The Secretary to Government,
   Government of Tamil Nadu (Home),
   Prohibition and Excise Department,
   Fort St.George, Chennai - 9.

2. The Commissioner of Police,
   Greater Chennai,
   Office of the Commissioner of Police
   (Goondas Section),
   Vepery, Chennai - 600 007.

3. The Superintendent,
   Central Prison, Puzhal,
   Chennai - 600 066.

4. The Inspector of Police,
   T-2, Ambattur Estate Police Station,
   Chennai. ..Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus to call for the records relating to the impugned order in Memo No.320/BCDFGISSSV/2020 dated 24.08.2020 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the detenu namely Loganathan, son of Pachaiappan, Hindu, aged about 42 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.C.Vinodhkumar
For Respondents: Mr.R.Prathap Kumar,
Addl.Public Prosecutor

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ORDER

[Order of the Court was made by V.SIVAGNANAM, J.]

The petitioner is the mother of Loganathan, son of Pachaiappan, Hindu, aged about 42 years, who is the detenu. The detenu has been detained by the second respondent by his order in Memo No.320/BCDFGISSSV/2020 dated 24.08.2020, 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 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 24.08.2020. The petitioner made a representation on 03.09.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 11.09.2020. The remarks were duly received on 14.09.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 06.11.2020.

6. It is the contention of the petitioner that the remarks were received on 14.09.2020 and there was a delay of 51 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 17 days were Government Holidays, hence, there was inordinate delay of 34 days in considering the representation.

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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 34 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.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.320/BCDFGISSSV/2020 dated 24.08.2020 passed by the second respondent is set aside. The detenu, namely,Loganathan, son of Pachaiappan, aged about 42 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,
   Government of Tamil Nadu (Home),
   Prohibition and Excise Department,
   Fort St.George, Chennai - 9.

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2. The Commissioner of Police,
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   Office of the Commissioner of Police
         (Goondas Section),
   Vepery, Chennai - 600 007.

3. The Superintendent,
   Central Prison, Puzhal,
   Chennai - 600 066.

4. The Inspector of Police,
   T-2, Ambattur Estate Police Station,
   Chennai.

5.The Joint Secretary to Government
  Public (law and order)
  Fort. St. George
  Chennai 9.

6. The Public Prosecutor,
   High Court, Madras.

H.C.P. No. 1650 of 2020

BP(CO)
SP(18/03/2021)

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