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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2021

CORAM

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

H.C.P.No. 1435 of 2021

Mageswari

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The District Collector and
District Magistrate of Cuddalore District,
Cuddalore.
3. The Superintendent of Police,
Cuddalore District, Cuddalore.
4. The Inspector of Police,
Thirupapuliyur Police Station,
Cuddalore District.
5. The Superintendent,
Central Prison, Cuddalore

...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, relating to petitioner's brother detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 12.06.2021 on the file of the 2nd respondent herein made in proceedings C3/D.O./17/2021 and quash the same as illegal and direct the respondents herein to produce the petitioner's brother namely Thangapandi @ Ezhumalai, son of Elango, aged 25 years, before this Hon'ble Court and set him at liberty.

For petitioner : Mr.C.C. Chellappan



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

O R D E R
[Made by R.HEMALATHA, J.]

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The petitioner is the sister of the detenu Thangapandi @ Ezhumalai, son of Elango, aged 25 years. The detenu has been detained by the 2nd respondent by his order dated 12.06.2021 in C3/D.O./17/2021, 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 12.06.2021. The petitioner made a representation on 08.09.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 13.09.2021. The remarks were duly received on 06.10.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 12.10.2021.

6. It is the contention of the petitioner that there was a delay of 23 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holidays and hence,



there was a delay of 17 days in submitting the remarks and there was no delay in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise Department after the Deputy Secretary dealt with it.

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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 unexplained delay of 17 days in submitting the remarks by the Detaining Authority. 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 C3/D.O./17/2021, dated 12.06.2021, passed by the 2nd respondent is set aside. The detenu Thangapandi @ Ezhumalai, son of Elango, aged 25 years, 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 Government, State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The District Collector and
District Magistrate of Cuddalore District,
Cuddalore.
3. The Superintendent of Police,
Cuddalore District, Cuddalore.
4. The Inspector of Police,
Thirupapuliyur Police Station,
Cuddalore District.
5. The Superintendent,
Central Prison, Cuddalore
6. The Joint Secretary to Government,
Public, Law and Order Department,
Secretariat, Chennai 600 009.
7. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1435 of 2021

BP(CO)
SP(23/12/2021)