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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2022

Coram:

The Honourable Mr. Justice S.VAIDYANATHAN
and
The Honourable Mr. Justice A.D.JAGADISH CHANDRA

H.C.P.No.9 of 2022

Rukmani

.. Petitioner/Wife of the detenue

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Villupuram District, Villupuram.
3. The Superintendent of Police,
O/o. Superintendent of Police,
Villupuram, Villupuram District.
4. The Superintendent of Prison,
Central Prison, Cuddalore,
Cuddalore District.
5. State rep.by
The Inspector of Police,
PEW Villupuram Police Station
Villupuram District.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 18.12.2021 on the file of Second respondent herein and made in proceedings Rc. No.C2/33981/2021 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Panneer @ Paneerselvam, Son of Ethiraj, aged about 43 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained in Central Prison-Cuddalore.



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For Petitioner : Mr. R.Sasikumar
For Respondents : Mr. E.Raj Thilak
Additional Public Prosecutor

ORDER

S.VAIDYANATHAN, J.
and
A.D.JAGADISH CHANDRA, J.

The petitioner is the wife of the detenu viz., Paneer @ Paneerselvam aged about 43 years, son of Ethiraj. The detenu has been detained by the second respondent by his order in Rc.No.C2/33981/2021 dated 18.12.2021, holding him to be a "Bootlegger", as contemplated under Section 2(b) 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 in time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor seriously opposed the Habeas Corpus Petition by filing counter affidavit. 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 18.12.2021. The petitioner made a representation on 27.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 30.12.2021. The remarks were duly received on 20.01.2022. Thereafter, the Government considered



the matter and passed the order rejecting the petitioner's representation on 18.04.2022.

6. It is the contention of the petitioner that there was a delay of 22 days in submitting the remarks by the Detaining Authority, of which 8 days were Government Holiday and hence there was an inordinate delay of 13 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 20.01.2022 and there was a delay of 88 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 29 days were Government Holidays, hence, there was inordinate delay of 60 days in considering the representation.

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 13 days in submitting the remarks by the Detaining Authority and unexplained delay of 60 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.

In the result, the Habeas Corpus Petition is allowed and the order of detention in Rc.No.C2/33981/2021 dated 18.12.2021, passed by the second respondent is set aside. The detenu, viz., Paneer @ Paneerselvam, aged about 43 years, son of Ethiraj, is



directed to be released forthwith unless his detention is required in connection with any other case.

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Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

bkn

To

1. Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.
2. The Joint Secretary to Government,
Public (Law and Order),
Secretariat, Chennai.
3. The District Collector and District Magistrate,
Villupuram District, Villupuram.
4. The Superintendent of Police,
O/o. Superintendent of Police,
Villupuram, Villupuram District.
5. The Superintendent of Prison,
Central Prison, Cuddalore,
Cuddalore District.
6. The Inspector of Police,
PEW Villupuram Police Station,
Villupuram District.
7. The Public Prosecutor,
High Court, Madras.

H.C.P.No.9 of 2022

AJS (CO)
UMA (13/06/2022)