



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2022

Coram:

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

H.C.P.No.14 of 2022

Sangeetha

.. Petitioner /
Wife of the Detenue

Vs.

1. The State of Tamil Nadu,
Rep. by the Additional Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600 007.
3. The Inspector of Police,
H-3 Tondiarpet Police Station,
Chennai.
4. The Superintendent of Prison,
Central Prison - II,
Puzhal, Chennai - 600 066.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records, relating to the detention order in Memo No.355/BCDFGISSSV/2021 dated 27.11.2021 passed by the second respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Thiru.Manikandan @ Kulla Mani S/o. Henry, aged about 27 years the detenue, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband Thiru.Manikandan @ Kulla Mani S/o. Henry, aged about 27 years the detenue herein set him liberty.



WEB COPY

For Petitioner : Mr. R.Muthukumar
For Respondents : Mr. M.Babu Muthumeeran
Additional
Public Prosecutor

ORDER

(Hearing was made through Hybrid mode)

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

The petitioner is the wife of the detenu Manikandan @ Kulla Mani, aged 27 years, S/o. Henry. The detenu has been detained by the second respondent by his order in Memo No.355/BCDFGISSSV/2021 dated 27.11.2021, 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. He further submitted that the bail application pertaining to the ground case has not been translated in vernacular language. He further submitted that the detaining authority, while detaining the detenu, has not furnished the legible copies of the documents relied on by him. This deprived the detenu from making effective representation.

4. The learned Additional Public Prosecutor vehemently opposed the Habeas Corpus Petition by filing a 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 27.11.2021. The petitioner made a representation on 30.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 30.12.2021. The remarks were duly received on 24.01.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 18.04.2022.

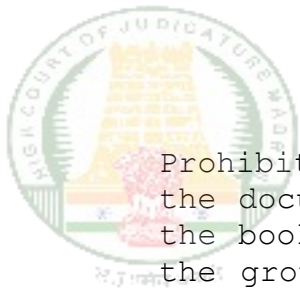
6. It is the contention of the petitioner that there was a delay of 25 days in submitting the remarks by the Detaining Authority, of which 9 days were Government Holiday and hence there was an inordinate delay of 16 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 24.01.2022 and there was an inordinate delay of 84 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise (X) Department after the Deputy Secretary dealt with it, of which 27 days were Government Holidays, hence, there was inordinate delay of 57 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 16 days in submitting the remarks by the Detaining Authority and unexplained delay of 57 days in considering the representation by the Hon'ble Minister for Home,



Prohibition and Excise (X) Department. Further, upon perusal of the documents available on record especially Page Nos.31 & 35 of the booklet, it is clear that the bail application pertaining to the ground case has not been translated in vernacular language. Thus for the above grounds, the impugned detention order is, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.355/BCDFGISSSV/2021 dated 27.11.2021, passed by the second respondent is set aside. The detenu, viz., Manikandan @ Kulla Mani, aged 27, S/o.Henry, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

bkn

To

1. The Additional Secretary, Home,
Prohibition and Excise Department,
State of Tamil Nadu,
Fort St.George, Chennai - 600 009.
- 2.The Joint Secretary to Government,
Public (L & O) Department,
Fort St.George, Chennai-9.
3. The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600 007.
4. The Inspector of Police,
H-3 Tondiarpet Police Station,
Chennai.
5. The Superintendent of Prison,
Central Prison - II,
Puzhal, Chennai - 600 066.



6.The Public Prosecutor,
High Court, Madras.

WEB COPY

GPL (CO)
CB (08/07/2022)

H.C.P.No.14 of 2022