

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

H.C.P.NO.80 OF 2022

Krishnaveni

.. Petitioner/
Mother of Detenue

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, 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,
Neyveli Township Police Station,
Neyveli, Cuddalore District.
5. The Superintendent,
Central Prison, Cuddalore.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the entire records, relating to petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 15.12.2021 on the file of the second respondent herein made in proceedings C3/D.O./39/2021 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's son namely Gopi, son of Venkatachalam, aged 26 years before this Court and set the petitioner's son at liberty from detention, now petitioner's son detained at Central Prison, Cuddalore.

For Petitioner : Mr.C.C.Chellappan

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 mother of the detenu Gopi, aged 26, S/o.Venkatachalam. The detenu has been detained by the second respondent by his order in C3/D.O.No.39/2021 dated 15.12.2021, 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 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 15.12.2021. The petitioner made a representation on 12.01.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 13.01.2022. The remarks were duly received on 04.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 19.04.2022.

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 9 days were Government Holiday and hence there was a delay of 13 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 04.02.2022 and there was an inordinate delay of 74 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise (XI) Department after the Deputy Secretary dealt with it, of which 25 days were Government Holidays, hence, there was inordinate delay of 49 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 49 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise (XI) 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 C3/D.O.No.39/2021 dated 15.12.2021, passed by the second respondent is set aside. The detenu, viz., Gopi,

aged 26, S/o.Venkatachalam, 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

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, 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,
Neyveli Township Police Station,
Neyveli, Cuddalore District.
5. The Superintendent,
Central Prison, Cuddalore.
6. The Public Prosecutor,
High Court, Madras.

H.C.P.No.80 of 2022

NR(CO)
RLP(13/07/2022)