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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM

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

H.C.P.NO.160 OF 2022

Mrs.Banumathi

...Petitioner

Vs.

- 1.The State rep by its
The Secretary to Government,
Home, Prohibition and Excise (XVI) Dept.,
Fort St. George, Secretariat, Chennai- 600 009.
- 2.The Commissioner of Police/Detaining Authority
Office of the Commissioner of Police,
Coimbatore City.
- 3.The Superintendent of Prison,
Central Prison at Coimbatore,
Gandhipuram, Coimbatore.
- 4.The Inspector of Police,
D-3, Podanur Police Station,
Coimbatore City.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records in Detention Order in C.No.55/G/IS/2021 dated 18.11.2021 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of the petitioner's father/detenu namely Mr.P.Muruganantham S/o. Pethannasamy aged about 49 years now confined in Central Prison at Coimbatore before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Subhadra Devi

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor



ORDER

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

The petitioner is the daughter of the detenu viz., P. Muruganantham, aged about 49 years, son of Pethannasamy. The detenu has been detained by the second respondent by his order in C.No.55/G/IS/2021 dated 18.11.2021, holding him to be a "Drug Offender", as contemplated under Section 2(e) 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 18.11.2021. The petitioner made a representation on 17.01.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 20.01.2022. The remarks were duly received on 27.01.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 20.04.2022.

6. It is the contention of the petitioner that there was a delay of 7 days in submitting the remarks by the Detaining Authority, of which 3 days were Government Holiday and hence there was an inordinate delay of 4 days in submitting the



remarks. It is the further contention of the petitioner that the remarks were received on 27.01.2022 and there was a delay of 83 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 26 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 4 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 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 C.No.55/G/IS/2021 dated 18.11.2021, passed by the second respondent is set aside. The detenu, viz., P.Muruganantham, aged about 49 years, son of Pethannasamy, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise (XVI) Dept.,
Fort St. George, Secretariat, Chennai- 600 009.
- 2.The Commissioner of Police/Detaining Authority
Office of the Commissioner of Police,
Coimbatore City.
- 3.The Superintendent of Prison,
Central Prison at Coimbatore,
Gandhipuram, Coimbatore.
- 4.The Inspector of Police,
D-3, Podanur Police Station,
Coimbatore City.
- 5.The Joint Secretary to Government
Public (Law & Order)
Fort St. George, Chennai-9
- 6.The Public Prosecutor,
High Court, Madras.

H.C.P.No.160 of 2022

PMK(CO)
RVM(16/06/2022)