

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.125 of 2022

Gomathi .. Petitioner/Mother of the Detenue
Vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Commissioner of Police,
Salem City,
Salem District.
3. The Superintendent of Prison,
Central Prison - Salem,
Salem District.
4. State rep. by its
The Inspector of Police,
Kitchipalayam Police Station,
Salem District.

.. 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 26.11.2021 on the file of the second respondent herein made in proceedings C.M.P. No.118/Goonda/Salem City/2021, and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's son namely Poovarasan @ Mottaiyan, S/o. Guna aged 21 years before this Court and set the petitioner's husband at liberty from detention, now petitioner's son detained at Central Prison, Salem.

For Petitioner : Mr. W.Camyles Gandhi

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 son of the detenu Poovarasan @ Mottaiyan, S/o. Guna aged 21 years. The detenu has been detained by the second respondent by his order in C.M.P.No.118/Goonda/Salem City/2021 dated 26.11.2021, 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.

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 26.11.2021. The petitioner made a representation on 21.01.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 21.01.2022. The remarks were duly received on 25.01.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.06.2022.

6. It is the contention of the petitioner that there was a delay of 5 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holiday and hence

there was a delay of 3 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 25.01.2022 and there was an inordinate delay of 143 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise (XIV) Department after the Deputy Secretary dealt with it, of which 45 days were Government Holidays, hence, there was inordinate delay of 98 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 3 days in submitting the remarks by the Detaining Authority and unexplained delay of 98 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise (XIV) 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.M.P. No.118/Goonda/Salem City/2021 dated 26.11.2021, passed by the second respondent is set aside. The detenu, viz., Poovarasan @ Mottaiyan, S/o. Guna aged 21 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,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Commissioner of Police,
Salem City,
Salem District.
3. The Superintendent of Prison,
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Salem District.
4. The Inspector of Police,
Kitchipalayam Police Station,
Salem District.
5. The Public Prosecutor,
High Court, Madras.

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NR(CO)
SB(12/07/2022)