



WEB COPY



HCP No.148 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2022

Coram:

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

H.C.P.No.148 of 2022

Murukeswari

.. Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The District Magistrate and District Collector,
Tiruppur District, Tiruppur.
3. The Superintendent of Police,
Tiruppur District, Tiruppur.
4. The Superintendent of Prison,
Central Prison,
Coimbatore – 18.
5. The Inspector of Police,
Udumalaipettai Police Station,
Tiruppur District.

.. Respondents



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Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the entire records, from the second respondent in connection with order Cr.M.P.No.52/GOONDA/2021 dated 31.12.2021 and quash the same and produce the petitioner's husband namely Selvaraj S/o. Palanisamy aged 59 years now confined in Central Prison, Coimbatore under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Mr. P.Pugalenthir

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 Selvaraj, aged 59 years, Son of Palanisamy. The detenu has been detained by the second respondent by his order in Cr.M.P. No.52/GOONDA/2021 dated 31.12.2021, 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.



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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 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.

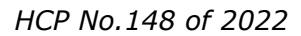


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WEB COPY 5. The Detention Order in question was passed on 31.12.2021. The petitioner made a representation on 19.01.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 19.01.2022. The remarks were duly received on 24.01.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.06.2022.

6. It is the contention of the petitioner that there was a delay of 6 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holiday and hence there was a delay of 4 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 142 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise (XII) Department after the Deputy Secretary dealt with it, of which 43 days were Government Holidays, hence, there was inordinate delay of 99 days in considering the representation.

7. In **Rekha vs. State of Tamil Nadu (2011 (5) SCC 244)**, the



10. In the subject case, admittedly, there is an inordinate and unexplained delay of 2 days in submitting the remarks by the Detaining Authority and unexplained delay of 99 days in considering the representation



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by the Hon'ble Minister for Home, Prohibition and Excise (XII) 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 Cr.M.P. No.52/GOONDA/2021 dated 31.12.2021, passed by the second respondent is set aside. The detenu, viz., Selvaraj, aged 59 years, Son of Palanisamy, is directed to be released forthwith unless his detention is required in connection with any other case.

(S.V.N.,J.) (A.D.J.C.,J.)
01.07.2022

Index: Yes/No
bkn

Note: Issue order copy forthwith.



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To
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6. The Public Prosecutor,
High Court, Madras.



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