



HCP No.173 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2022

Coram:

The Honourable Mr. Justice **S.VAIDYANATHAN**

and

The Honourable Mr. Justice **A.D.JAGADISH CHANDIRA**

H.C.P.No.173 of 2022

K.Hemalatha

.. Petitioner

Vs.

1. State of Tamil Nadu,
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
3. The Superintendent of Police,
Nagapattinam District,
Nagapattinam.
4. The Superintendent,
Central Prison,
Tiruchirappalli.
5. The Circle Inspector of Police,
Kilvelur Circle,
Nagapattinam District.

.. Respondents



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Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records in connection with the detention order passed in C.O.C. No.04/2022 dated 08.01.2022 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Kanthan, S/o.Selvaraj, male, aged 42 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr. K.A.S.Prabhu

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 detenu Kanthan, S/o.Selvaraj, male, aged 42 years. The detenu has been detained by the second respondent by his order in C.O.C. No.04/2022 dated 08.01.2022, holding him to be a "Bootlegger", as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

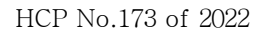


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2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

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 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



6. It is the contention of the petitioner that there was a delay of 15 days in submitting the remarks by the Detaining Authority, of which 4 days were Government Holidays, hence there was a delay of 11 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 11.02.2022 and there was an inordinate delay of 67 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise (XV) Department after the Deputy Secretary dealt with it, of which 22 days were Government Holidays, hence, there was inordinate delay of 45 days in considering the representation.



WEB COPY 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.



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10. In the subject case, admittedly, there is an inordinate and unexplained delay of 11 days in submitting the remarks by the Detaining Authority and unexplained delay of 45 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise (XV) 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.O.C. No.04/2022 dated 08.01.2022, passed by the second respondent is set aside. The detenu, viz., Kanthan, S/o.Selvaraj, male, aged 42 years, 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.)
05.07.2022

Index: Yes/No
bkn

Note: i) Issue order copy forthwith.

ii) The Uploaded order can be utilized for the purpose of the execution of the order.



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To
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1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
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6. The Public Prosecutor,
High Court, Madras.



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

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