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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2022

Coram

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

H.C.P.No.199 of 2022

Santhakumari .. Petitioner

Vs

1.State of Tamil Nadu represented by
The Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St.George,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Chengalpattu District, Chengalpattu.

3.The Superintendent of Police,
Chengalpattu District, Chengalpattu.

4.The Inspector of Police,
Chengalpattu Taluk Police Station,
Chengalpattu.

5.The Superintendent,
Central Prison-II,
Puzhal, Chennai. .. 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 CPT No.07/2022 dated 14.01.2022 on the file of the second respondent herein and set aside the same as illegal and produce the detenu Akash, son of Arputharaj, aged about 22 years, now confined at the Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy

For Respondents : Mr.M.Babu Muthumeeran
Addl. Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu Akash, son of Arputharaj, aged about 22 years. The detenu has been detained by the second respondent by his order in CPT No.07/2022 dated 14.01.2022, 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 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 on behalf of the detenu was not considered in time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. 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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5. The Detention Order in question was passed on 14.01.2022. A representation was made on behalf of the detenu on 07.02.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 22.02.2022. The remarks were duly received on 04.03.2022. Thereafter, the Government considered the matter and passed the order rejecting the representation on 18.04.2022.

6. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining Authority, of which, 2 days were Government Holidays and hence there was an inordinate delay of 8 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 04.03.2022 and there was a delay of 45 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, 16 days were Government Holidays, hence, there was an inordinate delay of 29 days in considering the representation.

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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 8 days in submitting the remarks by the Detaining Authority and unexplained delay of 29 days in considering

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the representation by the Hon'ble Minister for Home, 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 CPT No.07/2022 dated 14.01.2022, passed by the second respondent is set aside. The detenu, viz., Akash, son of Arputharaj, aged about 22 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.)
07.07.2022

Index: Yes/No
nsd

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To

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2.The District Collector and District Magistrate,
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Chengalpattu.

5.The Superintendent,
Central Prison-II,
Puzhal, Chennai.

6.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai – 9.

7.The Public Prosecutor,
High Court, Madras.

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S.VAIDYANATHAN, J.
and
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