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HCP No.412 of 2022

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.412 of 2022

K.Amudha

.. Petitioner

Vs.

1. The Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
2. The District Magistrate cum District Collector,
Tiruvallur District,
Tiruvallur.
3. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.
4. The Superintendent of Police,
Tiruvallur District, Tiruvallur.
5. The Inspector of Police, (L&O),
Periyapalayam Police Station,
Periyapalayam, Tiruvallur.

.. Respondents



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Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the respondents to produce the petitioner's son Magesh @ Pura Magesh @ Magesh Kumar, Male, aged 38 years S/o. Kumaravelu and detained under impugned order dated 21.12.2021 under Act 14/82 of the second respondent in B.C.D.F.G.I.S.S.S.V.No.130/2021 and now confined at Central Prison, Puzhal of the third respondent herein by calling for records in respect of the impugned order dated 21.12.2021 under Act 14/82 of the second respondent in B.C.D.F.G.I.S.S.S.V.No.130/2021 before this Court and set him at liberty forthwith by setting aside the order of detention bearing B.C.D.F.G.I.S.S.S.V.No.130/2021 dated 21.12.2021.

For Petitioner : Mr. A.Thirumaran
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 mother of detenu Magesh @ Pura Magesh @ Magesh Kumar, Male, aged 38 years S/o. Kumaravelu. The detenue has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V.No.130/2021 dated 21.12.2021, holding him to be a



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"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 21.12.2021. The petitioner made a representation on 29.01.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 29.01.2022. The remarks were duly received on 09.02.2022. 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 12 days in submitting the remarks by the Detaining Authority, of which 3 days were Government Holidays, hence there was a delay of 9 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 09.02.2022 and there was an inordinate delay of 137 days in considering the representation by the Hon'ble Minister for Home, Prohibition



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and Excise (XI) Department after the Deputy Secretary dealt with it, of which 40 days were Government Holidays, hence, there was inordinate delay of 97 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



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representation renders the very detention illegal.

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10. In the subject case, admittedly, there is an inordinate and unexplained delay of 9 days in submitting the remarks by the Detaining Authority and unexplained delay of 97 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise (XI) 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 B.C.D.F.G.I.S.S.S.V.No.130/2021 dated 21.12.2021, passed by the second respondent is set aside. The detenu, viz., Magesh @ Pura Magesh @ Magesh Kumar, Male, aged 38 years S/o. Kumaravelu, 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
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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5. The Inspector of Police, (L&O),
Periyapalayam Police Station,
Periyapalayam, Tiruvallur.
6. The Public Prosecutor,
High Court, Madras.



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

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