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HCP No.435 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2022

Coram

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

H.C.P.No.435 of 2022

N.Hameeda Banu
W/o.Nasar Ali

... Petitioner

Vs.

1.The State represented by its
The Principal Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Tiruppur City.

3.The Superintendent of Prison,
Central Prison at Coimbatore,
Coimbatore.

4.The Inspector of Police,
Cyber Crime Police Station,
Tiruppur City.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records in detention order in C.No.02/C.L.O/IS/Tiruppur City/2022 dated 07.01.2022 on the file of the second respondent and set aside the same and direct the respondents herein to produce the body of the detenu Niyas S/o.Nasar Ali, aged about 23 years, now confined in Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.M.Mohamed Saifula

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by **P.N.PRAKASH, J.**]

The petitioner is the mother of the detenu viz., Niyas S/o.Nasar Ali, aged about 23 years. The detenu has been detained by the second respondent by his order in C.No.02/C.L.O/IS/Tiruppur City/2022 dated 07.01.2022, holding him to be a "Cyber Law Offender", as contemplated under Section 2(bb) of the 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 strongly 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.



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5. The Detention Order in question was passed on 07.01.2022. The petitioner made a representation dated 28.01.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 08.02.2022. The remarks were duly received on 16.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 20.04.2022.

6. It is the contention of the petitioner that there was a delay of 7 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence, there was an inordinate delay of 5 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 16.02.2022 and there was a delay of 62 days in considering the representation by the Hon'ble Minister for Home, P&E after the Deputy Secretary dealt with it, of which 20 days were Government holidays. Hence, there was inordinate delay of 42 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 5 days in submitting the remarks by the Detaining



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Authority and unexplained delay of 42 days in considering the representation by the Hon'ble Minister for Home, P&E. 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.No.02/C.L.O/IS/Tiruppur City/2022 dated 07.01.2022 passed by the second respondent is set aside. The detenu, viz., Niyas S/o.Nasar Ali, aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[PNP, J.] [NAV, J.]
23.12.2022

Index: Yes/No
gm/ssr

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Tiruppur City.



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3.The Superintendent of Prison,
Central Prison at Coimbatore,
Coimbatore.

4.The Inspector of Police,
Cyber Crime Police Station,
Tiruppur City.

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

6.The Public Prosecutor,
High Court, Madras.



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