



H.C.P.No.573 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **RMT.TEEKAA RAMAN**

H.C.P.No.573 of 2022

Parthiban

.. Petitioner

Vs

State represented by

- 1.The Secretary to Government (Home)
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Thiruvannamalai.
- 3.The Superintendent of Police,
Thiruvannamalai District,
Thiruvannamalai.
- 4.The Superintendent,
Special Prison for Women,
Vellore.
- 5.State represented by
The Inspector of Police,
Chengam Police Station.

.. 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 pertaining to the order of detention dated 04.03.2022 passed by the first respondent in D.O.No.16/2022-C2 and quash the same and produce detainee Suguna @ Thattammal, aged about 39 years, W/o.late Palani, detained at the Special Prison for Women, Vellore, before this Court and set her at liberty and the detainee now has been confined at the Special Prison for Women, Vellore.

For Petitioner : Mr.Md.Saifullah

For Respondents : Mr.R.Muniyapparaj
Addl. Public Prosecutor

ORDER

(Made by *P.N.PRAKASH, J.*)

The petitioner is the son of the detainee Suguna @ Thattammal, aged about 39 years, W/o.late Palani. The detainee has been detained by the second respondent by his order in D.O.No.16/2022-C2 dated 04.03.2022, holding her 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 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 detainee was not considered in 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 detainee 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 04.03.2022. A representation was made on behalf of the detenue dated nil. Thereafter, remarks were called for by the Government from the Detaining Authority on 22.03.2022. The remarks were duly received on 26.04.2022. Thereafter, the Government considered the matter and passed the order rejecting the representation on 01.08.2022.

6. It is the contention of the petitioner that there was a delay of 35 days in submitting the remarks by the Detaining Authority, of which, 12 days were Government Holidays and hence there was an inordinate delay of 23 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 26.04.2022 and there was a delay of 97 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, 30 days were Government Holidays, hence, there was an inordinate delay of 67 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 detainee.

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 detainee 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 23 days in submitting the remarks by the Detaining Authority and unexplained delay of 67 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 D.O.No.16/2022-C2 dated 04.03.2022, passed by the second respondent is set aside. The detainee, viz. Suguna @ Thattammal, aged about 39 years, W/o.late Palani, is directed to be released forthwith unless her detention is required in connection with any other case.

(P.N.P., J.) (TKRJ)
27.10.2022

Index: Yes/No
nsd



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- 3.The Superintendent of Police,
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- 4.The Superintendent,
Special Prison for Women,
Vellore.
- 5.The Inspector of Police,
Chengam Police Station.
- 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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