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H.C.P.No.491 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

H.C.P.No.491 of 2022

M. Abirami

Petitioner

v

- 1 The State of Tamil Nadu
represented by the Secretary to Government
Prohibition & Excise Department
Fort St. George
Chennai 600 009
- 2 The District Collector and District Magistrate
Mayiladuthurai District
Mayiladuthurai
- 3 The Superintendent of Police
Mayiladuthurai District
- 4 The Inspector of Police
Kuthalam Police Station
Mayiladuthurai District
- 5 The Superintendent of Prison
Central Prison
Thiruchirappalli

Respondents



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Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS calling for the records pertaining to C.O.C.No.01/2022 dated 07.01.2022 on the file of the second respondent and set aside the same and direct the respondents to produce the petitioner's husband Appu @ Prabhakar, S/o Marimuthu, aged 25 years, now confined in the Central Prison, Thiruchirappallai, before this Court and set him at liberty.

For Petitioner : Mr.U. Kathiravan

For Respondents : Mr.R.Muniyapparaj

Additional Public Prosecutor

ORDER

[Made by N.ANAND VENKATESH, J.]

The petitioner is the mother of the detenu viz., Appu @ Prabhakar, S/o Marimuthu, aged 25 years. The detenu has been detained by the 2nd respondent by his order dated 07.01.2022 in C.O.C.No.01/2022, holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) 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.



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3. The learned Additional Public Prosecutor, on instructions, submitted that the detenu was arrested on 12.01.2022 and the investigation was completed and final report was filed on time on 27.03.2022 and the same has been taken on file by the Special Court for POCSO Act Cases, Nagapattinam, in Spl.S.C.No.30 of 2022. The learned Additional Public Prosecutor further submitted that the case is now in the stage of examination of witnesses.

4. 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.

5. 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



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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.

6. The Detention Order in question was passed on 07.01.2022. The petitioner made a representation on 17.01.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 20.01.2022. The remarks were duly received on 01.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 18.04.2022.

7. 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 5 days were Government Holidays and hence, there was an inordinate delay of 7 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 01.02.2022 and there was a delay of 76 days in considering the representation by the Hon'ble Minister concerned, after the Deputy Secretary dealt with it, of which 24 days were Government Holidays, hence, there was inordinate delay of 52 days in considering the representation.



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8. In **Rekha Vs. State of Tamil Nadu [2011 (5) SCC 244]**, the Hon'ble 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.

9. 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.

10. In **Tara Chand Vs. State of Rajasthan and others**, reported in **[1980 (2) SCC 321]**, the Hon'ble 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.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 7 days in submitting the remarks by the Detaining Authority and



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unexplained delay of 52 days in considering the representation by the Hon'ble Minister concerned. 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.01/2022 dated 07.01.2022, passed by the 2nd respondent is set aside. The detenu viz., Appu @ Prabhakar, S/o Marimuthu, aged 25 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

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Issue order copy by 14.12.2022

[P.N.P., J.]

[N.A.V., J.]

13.12.2022



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To

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- 1 The Secretary to Government
Prohibition & Excise Department
Fort St. George
Chennai 600 009
- 2 The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai-9
- 3 The Sessions Judge
Special Court for POCSO Act Cases
Nagapattinam
(Spl.S.C.No.30 of 2022)
- 4 The District Collector and District Magistrate
Mayiladuthurai District
Mayiladuthurai
- 5 The Superintendent of Police
Mayiladuthurai District
- 6 The Inspector of Police
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- 7 The Superintendent of Prison
Central Prison
Thiruchirappalli
- 8 The Public Prosecutor
High Court, Madras

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