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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2022

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.846 of 2021

Kanaga
W/o.Manikandan

.. Petitioner

Vs.

1. The District Collector and District Magistrate,
Collectorate Office,
Salem.
2. Government of Tamil Nadu,
represented by its Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
3. The Superintendent of Police,
Salem.
4. The Superintendent,
Central Prison,
Salem.
5. The Inspector of Police,
AWPS, Attur.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records in detention order in C.M.P.No.12/Sexual Offender/C2/2021 dated 11.03.2021 on the file of the first respondent and quash the same and direct the respondents herein to produce the detenu Manikandan s/o.Murugesan, aged about 27 years, who is now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.N.Kalidoss

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor



ORDER

[Order of the Court was made by P.N.PRAKASH, J]

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The petitioner is the wife of the detenu viz., Manikandan s/o.Murugesan, aged about 27 years. The detenu has been detained by the first respondent by his order in C.M.P.No.12/Sexual Offender/C2/2021 dated 11.03.2021, holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) of the 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 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.

5. The Detention Order in question was passed on 11.03.2021. The petitioner made a representation dated Nil. Thereafter, remarks were called for by the Government from the Detaining Authority on 08.04.2021. The remarks were duly received on 30.04.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 07.06.2021.

6. It is the contention of the petitioner that there was a delay of 21 days in submitting the remarks by the Detaining Authority, of which 8 days were Government holidays and hence, there was a delay of 13 days in submitting the remarks by the Detaining Authority. It is the further contention of the petitioner that the remarks were received on 30.04.2021 and



there was a delay of 3 days in considering the representation by the Hon'ble Minister for Home, Prohibition & Excise Department, after the Deputy Secretary dealt with it. Hence, there was inordinate delay of 3 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 13 days in submitting the remarks by the Detaining Authority and unexplained delay of 3 days in considering the representation by the Hon'ble Minister for Home, Prohibition & 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 C.M.P.No.12/Sexual Offender/C2/2021 dated 11.03.2021 passed by the first respondent is set aside. The detenu, viz., Manikandan s/o.Murugesan, aged about 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gm



To

1. The District Collector and District Magistrate,
Collectorate Office,
Salem.
2. The Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
3. The Superintendent of Police,
Salem.
4. The Superintendent,
Central Prison,
Salem.
5. The Inspector of Police,
AWPS, Attur.
6. The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.
7. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Kalidoss, Advocate, S.R.No.3628

H.C.P.No.846 of 2021

RSV(CO)
SU(25/01/2022)