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HCP No.743 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2022

Coram

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN**

H.C.P.No.743 of 2022

Shanthi
W/o.Gunasekar

... Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police,
Avadi City,
Avadi, Chennai - 600 054.

3.The Superintendent of Central Prison,
Central Prison, Puzhal,
Chennai - 600 066.

4.The Inspector of Police,
T-7 Tank Factory Police Station,
Vellanoor, Avadi,
Chennai - 600 062.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records in connection with the detention order passed by the second respondent in No.11/BCDFGISSSV/2022 dated 31.03.2022 against the petitioner's son, the detenu herein, now confined in Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu viz., Prakash S/o.Gunasekar, aged 25 years, before this Court and set him at liberty.

For Petitioner : Mr.A.Nirmal Kumar
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by ***RMT. TEEKAA RAMAN, J.***]

The petitioner is the mother of the detenu, Prakash S/o.Gunasekar, aged 25 years. The detenu has been detained by the second respondent by his order in No.11/BCDFGISSSV/2022 dated 31.03.2022, holding him to be a "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.



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2. We have heard learned counsel for the petitioner and learned Additional Public Prosecutor 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. 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 31.03.2022. The petitioner made a representation dated 26.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 28.04.2022. The remarks were duly received on 19.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 24.05.2022.

6. It is the contention of the petitioner that there was a delay of 20 days in submitting the remarks by the Detaining Authority, of which 7 days were Government holidays and hence, there was an inordinate delay of 13 days in submitting the remarks. There was a delay of 3 days in considering the representation by the Hon'ble Minister for Home, P&E after the Deputy Secretary dealt with it, of which 2 days were Government holidays. Hence, there was inordinate delay of 14 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



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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 1 day in considering the representation by the Hon'ble Minister for Home, P&E. The impugned detention order is, therefore, liable to be quashed.



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In the result, the Habeas Corpus Petition is allowed and the order of detention in No.11/BCDFGISSSV/2022 dated 31.03.2022, passed by the second respondent is set aside. The detenu, viz., Prakash S/o.Gunasekar, aged 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[PNP, J.] [TKR, J.]
28.11.2022

Index: Yes/No
gm

To

- 1.The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George, Chennai - 600 009.
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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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P.N.PRAKASH, J.
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