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HCP No.851 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2022

Coram

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

H.C.P.No.851 of 2022

Jayakodi
W/o.Venkatesan

... Petitioner

Vs.

- 1.The State represented by
The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
- 2.The District Collector/Detaining Authority,
Kallakurichi District,
Kallakurichi.
- 3.The Superintendent of Prison,
Central Prison, Cuddalore.
- 4.The Inspector of Police,
Prohibition Enforcement Wing,
Kallakurichi, Kallakurichi District.

... 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 pertaining to the order of detention passed by the second respondent in D.O.No.C2/17/2022 dated 16.04.2022 and quash the same and produce the detenu Venkatesan s/o.Ponnan, aged 38 years, before this Court and set him at liberty and the detenu now has been confined at Central Prison, Cuddalore.

For Petitioner : Mr.D.Ashok Kumar
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu, Venkatesan s/o.Ponnan, aged 38 years. The detenu has been detained by the second respondent by his order in D.O.No.C2/17/2022 dated 16.04.2022, holding him 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 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 16.04.2022. The petitioner made a representation dated 22.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 25.04.2022 and the remarks were duly received on 06.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 14.06.2022.

6. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining Authority, of which 3 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 06.05.2022 and there was a delay of 16 days in considering the representation by the Hon'ble Minister for Home, P&E after the Deputy Secretary dealt with it, of which 6 days were Government holidays. Hence, there was inordinate delay of 17 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 7 days in submitting the remarks by the Detaining



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Authority and unexplained delay of 10 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 D.O.No.C2/17/2022 dated 16.04.2022, passed by the second respondent is set aside. The detenu, viz., Venkatesan s/o.Ponnan, aged 38 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[PNP, J.] [TKR, J.]
31.10.2022

Index: Yes/No
gm

To

- 1.The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
- 2.The District Collector/Detaining Authority,
Kallakurichi District,
Kallakurichi.



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3.The Superintendent of Prison,
Central Prison, Cuddalore.

4.The Inspector of Police,
Prohibition Enforcement Wing,
Kallakurichi, Kallakurichi District.

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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