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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MS.JUSTICE R.N. MANJULA

H.C.P.NO. 828 OF 2021

Geetha ...Petitioner

.Vs.

1. The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Prohibition and Excise Department (Home),
Fort St. George, Chennai – 600 009.

2. The District Collector and District Magistrate of
Thiruvarur District,
Thiruvarur District, Thiruvarur.

3. The Superintendent of Police,
Thiruvarur District, Thiruvarur.

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

5. The Inspector of Police,
Muthupettai Police Station,
Thiruvarur District. ...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records pertaining to the detention order dated 09.05.2021 in C.O.C. No.06/2021 passed by the 2nd respondent and issue direction to produce the body of the detenu namely Yogeshwaran, aged 24 years, S/o. Ambikapathi presently confined at Central Prison, Cuddalore, before this Hon'ble Court and set him at liberty.

For petitioner : Mr.Swamisubramanian

For respondents : Mr.R.Muniyapparaj,
Additional Public Prosecutor.

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O R D E R
[Made by P.N. PRAKASH, J.]

The petitioner is the mother of the detenu Yogeshwaran, aged 24 years, S/o. Ambikapathi. The detenu has been detained by the 2nd respondent by his order dated 09.05.2021 in C.O.C. No.06/2021, 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.

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 filed his counter affidavit and 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 09.05.2021. The petitioner made a representation on 17.05.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 24.05.2021. The remarks were duly received on 28.06.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 09.08.2021.

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 10 days were Government Holidays and hence, there was a delay of 25 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 28.06.2021 and there was a delay of 42 days in considering the representation by the Hon'ble Minister for Home,

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Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 13 days were Government Holidays, hence, there was an unexplained delay of 29 days in considering the representation.

7. 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.

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 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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 25 days in submitting the remarks by the Detaining Authority and an inordinate delay of 29 days in considering 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 C.O.C. No.06/2021, dated 09.05.2021, passed by the 2nd respondent is set aside. The detenu Yogeshwaran, male, aged 24 years, S/o.Ambikapathi, is directed to be released forthwith, unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mtl

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To

1. The State of Tamil Nadu,
   Rep. by its Additional Chief Secretary to Government,
   Prohibition and Excise Department (Home),
   Fort St. George, Chennai - 600 009.

2. The District Collector and District Magistrate of
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4. The Superintendent of Prison,
   Central Prison, Cuddalore.

5. The Inspector of Police,
   Muthupettai Police Station,
   Thiruvarur District.

6. The Joint Secretary to Government,
   Public, Law and Order Department,
   Secretariat, Chennai 600 009.

7. The Public Prosecutor,
   High Court, Madras.

H.C.P.No.828 of 2021

KSM(CO)
PM/06/01/2022

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