



WEB COPY



HCP No.785 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2022

Coram

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

H.C.P.No.785 of 2022

Jothika
D/o.Ramesh

... Petitioner

Vs.

1.The Secretary to the Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai - 600 009.

2.The District Magistrate and District Collector,
Tiruvallur District, Tiruvallur.

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

4.The Inspector of Police,
Periyapalayam Police Station,
Chennai.

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

... Respondents



HCP No.785 of 2022

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus calling for the entire records connected with the order of the second respondent herein in BCDFGISSSV No.08/2022 dated 04.03.2022 passed against the petitioner's brother, the detenu, namely Jayaprakash @ Kutty s/o.Ramesh, aged about 24 years, as a "Goonda", who is confined at Central Prison-II, Puzhal, Chennai-66 and set aside the same and consequently, direct the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.T.R.Ravi

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the sister of the detenu, Jayaprakash @ Kutty s/o.Ramesh, aged about 24 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.08/2022 dated 04.03.2022, 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.



HCP No.785 of 2022

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.



HCP No.785 of 2022

5. The Detention Order in question was passed on 04.03.2022. The petitioner made a representation dated 19.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 02.05.2022. The remarks were duly received on 16.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 19.05.2022.

6. It is the contention of the petitioner that there was a delay of 13 days in submitting the remarks by the Detaining Authority, of which 5 days were Government holidays and hence, there was an inordinate delay of 8 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 16.05.2022 and there was a delay of 2 days in considering the representation by the Hon'ble Minister for Home, P&E after the Deputy Secretary dealt with it. Hence, there was inordinate delay of 10 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



HCP No.785 of 2022

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 8 days in submitting the remarks by the Detaining Authority and unexplained delay of 2 days in considering the representation by the Hon'ble Minister for Home, P&E. The impugned detention order is, therefore, liable to be quashed.



HCP No.785 of 2022

In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.08/2022 dated 04.03.2022, passed by the second respondent is set aside. The detenu, viz., Jayaprakash @ Kutty s/o.Ramesh, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[PNP, J.] [TKR, J.]
28.10.2022

Index: Yes/No
gm

To

- 1.The Secretary to the Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai - 600 009.
- 2.The District Magistrate and District Collector
Tiruvallur District, Tiruvallur.
- 3.The Superintendent of Police,
Tiruvallur, Tiruvallur District.
- 4.The Inspector of Police,
Periyapalayam Police Station,
Chennai.
- 5.The Superintendent of Prison,
Central Prison-II, Puzhal,
Chennai - 600 066.



HCP No.785 of 2022

6.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai – 9.

7.The Public Prosecutor,
High Court, Madras.



WEB COPY



HCP No.785 of 2022

P.N.PRAKASH, J.
and
RMT. TEEKAA RAMAN, J.

gm

H.C.P.No.785 of 2022

28.10.2022