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H.C.P.No.971 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

H.C.P.No.971 of 2022

R. Balamurugan

Petitioner

Vs.

- 1 The Government of Tamil Nadu
represented by its Secretary to Government
Home, Prohibition and Excise Department
Fort St. George
Chennai 600 009
- 2 The District Collector and District Magistrate
Villupuram District
Villupuram
- 3 The Inspector of Police
Prohibition Excise Wing
Kottikuppam
Villupuram District
- 4 The Superintendent
Special Prison for Women
Vellore

Respondents



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Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS and quash the detention order in Rc.No.C2/11499/2022 dated 19.04.2022 of the second respondent branding the petitioner as a Bootlegger and direct the respondents to set the detenue Karnagi, aged 38 years, D/o.Rajendran, resident of Mettu Street, Kottikuppam Colony, Marakkanam Taluk, Villupuram District, at liberty, now detained under the custody of the fourth respondent.

For Petitioner : Mrs. AL. Ganthimathi
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by P.N.PRAKASH, J.]

The petitioner is the brother of the detenue *viz.*, Karnagi, aged 38 years, D/o.Rajendran. The detenue has been detained by the 2nd respondent by his order dated 19.04.2022 in Rc.No.C2/11499/2022, holding her 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.

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.



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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 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 detainee 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 19.04.2022. The petitioner made a representation dated 16.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 14.06.2022.



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6. It is the contention of the petitioner that there was a delay of 28 days in considering the representation by the Hon'ble Minister concerned, after the Deputy Secretary dealt with it, of which 8 days were Government holidays. Hence, there was inordinate delay of 20 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



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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 20 days in considering the representation by the Hon'ble Minister concerned. 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 Rc.No.C2/11499/2022 dated 19.04.2022, passed by the 2nd respondent is set aside. The detainee viz., Karnagi, aged 38 years, D/o.Rajendran, is directed to be released forthwith, unless her detention is required in connection with any other case.

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Issue order copy by 14.12.2022

[P.N.P., J.]

[N.A.V., J.]

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AND

N. ANAND VENKATESH, J.

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To

- 1 The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George
Chennai 600 009
- 2 The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai-9
- 3 The District Collector and District Magistrate
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