



WEB COPY



Order dated : 01.12.2022
HCP No.982 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2022

Coram

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

H.C.P.No.982 of 2022

Shankar
S/o.Varadhan

... Petitioner

Vs.

- 1.The State of Tamil Nadu represented by ,
The Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Chengalpattu District, Chengalpattu.
- 3.The Superintendent,
Women Special Prison, Puzhal,
Chennai – 600 066.
- 4.The Superintendent of Police,
Chengalpattu District.
- 5.The Inspector of Police,
PEW Madhuranthagam,
Chengalpattu District.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus seeking a direction to call for the records relating to the detention order issued by the second respondent herein in CPT No.28/2022 dated 12.05.2022 and quash the same and direct the respondents herein to produce the body of the detainee viz. Bakkiyalakshmi, W/o.Shankar, aged 40 years, wife of the petitioner herein and set her at liberty from the third respondent prison viz. Women Special Prison, Puzhal, Chennai-600 066 forthwith.

For Petitioner : Mr.G.Mageshkumar
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the husband of the detainee, Bakkiyalakshmi, W/o.Shankar, aged 40 years. The detainee has been detained by the second respondent by his order in CPT No.28/2022 dated 12.05.2022, holding 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 detainee 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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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 detainee 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 29 days 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 CPT No.28/2022 dated 12.05.2022, passed by the second respondent is set aside. The detenue, viz., Bakkiyalakshmi, W/o.Shankar, aged 40 years, is directed to be released forthwith unless her detention is required in connection with any other case.

[PNP, J.] [TKR, J.]
01.12.2022

Index: Yes/No
gm



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