



WEB COPY



Order dated : 02.12.2022

HCP No.1084 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2022

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

and

THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

H.C.P.No.1084 of 2022

Veerapan
S/o.Manokar

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai - 9.
- 2.The District Magistrate and District Collector,
Office of the District Collector,
Namakkal District.
- 3.The Superintendent of Police,
Special Prison for Women,
Coimbatore.
- 4.The Superintendent of Police,
Superintendent of Police Office,
Namakkal.



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5. The Inspector of Police,
Nallipalayam Police Station,
Namakkal District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus calling for the entire records relating to the petitioner's daughter detention under Tamil Nadu Act 14 of 1982 vide detention order dated 08.03.2022 on the file of the second respondent herein made in proceedings Memo C.M.P.No.7/Goonda/2022[M1], quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's daughter, namely, Maharajothi W/o.Sankar, aged 29 years, before this Court and set her at liberty from detention, now the petitioner's daughter detained at Special Prison for Women, Coimbatore.

For Petitioner : Mr.Deepan Uday

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detinue, Maharajothi W/o.Sankar, aged 29 years. The detinue has been detained by the second respondent by his order in C.M.P.No.7/Goonda/2022[M1] dated 08.03.2022, holding her 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.



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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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5. The Detention Order in question was passed on 08.03.2022. The petitioner made a representation dated 18.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 22.04.2022. The remarks were duly received on 23.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.05.2022.

6. It is the contention of the petitioner that there was a delay of 30 days in submitting the remarks by the Detaining Authority, of which 11 days were Government holidays and hence, there was an inordinate delay of 19 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 23.05.2022 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 21 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



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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 detainee.

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 19 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.



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In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.7/Goonda/2022[M1] dated 08.03.2022, passed by the second respondent is set aside. The detenue, viz., Maharajothi W/o.Sankar, aged 29 years, is directed to be released forthwith unless her detention is required in connection with any other case.

[PNP, J.] [TKR, J.]
02.12.2022

Index: Yes/No
gm



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- 5.The Inspector of Police,
Nallipalayam Police Station,
Namakkal District.
- 6.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai – 9.
- 7.The Public Prosecutor,
High Court, Madras.



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