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H.C.P.No.1223 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **RMT.TEEKAA RAMAN**

H.C.P.No.1223 of 2022

Lilly Pushpam

.. Petitioner

Vs

- 1.The Additional Chief Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Kallakurichi District, Kallakurichi – 606 213.
- 3.The Superintendent of Police,
Kallakurichi District, Kallakurichi – 606 213.
- 4.The Superintendent of Prison,
Central Prison,
Cuddalore – 607 401.
- 5.The Inspector of Police,
Moongilthuraipattu Police Station,
Sankarapuram Police Circle,
Kallakurichi – 606 213.

.. Respondents



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Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records pertaining to the order of detention passed by the second respondent herein made in D.No.C2/18/2022 dated 22.04.2022 and to set aside the same and directing the fifth respondent to produce the detenu, petitioner's father Babu @ Anthonymsamy, who has now been confined in the Central Prison, Cuddalore, before this Court and thereby setting him at liberty.

For Petitioner : Mr.S.Nirmal Aditya

For Respondents : Mr.R.Muniyapparaj
Addl. Public Prosecutor

ORDER

(Made by *P.N.PRAKASH, J.*)

The petitioner is the daughter of the detenu Babu @ Anthonymsamy, male, aged 58 years, S/o.Mathew Aruldoss. The detenu has been detained by the second respondent by his order in D.No.C2/18/2022 dated 22.04.2022, holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus



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Petition.

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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 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 on behalf of the detenu was not considered in time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. 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



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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 22.04.2022. A representation was made on behalf of the detenu on 12.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the representation on 03.06.2022.

6. It is the contention of the petitioner that there was a delay of 18 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, 4 days were Government Holidays, hence, there was an inordinate delay of 14 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 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.



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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 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 14 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.



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In the result, the Habeas Corpus Petition is allowed and the order of detention in D.No.C2/18/2022 dated 22.04.2022, passed by the second respondent is set aside. The detenu, viz. Babu @ Anthonymsamy, male, aged 58 years, S/o.Mathew Aruldoss, is directed to be released forthwith unless his detention is required in connection with any other case.

(P.N.P., J.) (TKRJ)
02.11.2022

Index: Yes/No
nsd



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To

- 1.The Additional Chief Secretary,
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Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Kallakurichi District, Kallakurichi – 606 213.
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Central Prison,
Cuddalore – 607 401.
- 5.The Inspector of Police,
Moongilthuraipattu Police Station,
Sankarapuram Police Circle,
Kallakurichi – 606 213.
- 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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and
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