



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MS. JUSTICE R.N.MANJULA

H.C.P.No.1311 of 2021

Tamaka Kavar
W/o.Om Singh

.. Petitioner

Vs.

1. The Government of Tamil Nadu
represented by its Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Linemedu, Salem - 636 006.
3. The Inspector of Police,
Shevapet Police Station,
Shevapet Main Road,
Salem - 636 002.
4. The Superintendent of Prisons,
Office of the Superintendent of Prisons,
Central Prison, Salem.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records of the proceedings in C.M.P.No.39/Goonda/Salem City/2021 dated 05.07.2021 on the file of the second respondent and consequently, direct the respondents to produce the detenu Omsingh s/o.Habatsingh, aged 28 years, presently detained at Central Prison, Salem, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Nandakumar
for Mr.Govind Chandrasekhar

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor



ORDER

[Order of the Court was made by R.N.MANJULA, J]

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The petitioner is the wife of the detenu viz., Omsingh s/o.Habatsingh, aged 28 years. The detenu has been detained by the second respondent by his order in C.M.P.No.39/Goonda/Salem City/2021 dated 05.07.2021, holding him to be a "Goonda", as contemplated under Section 2(f) of the 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.

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 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 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 05.07.2021. The petitioner made a representation on 15.07.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 19.07.2021. The remarks were duly received on 30.07.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 23.08.2021.

6. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining Authority, of which 3 days were Government Holidays and hence, there was an inordinate delay of 7 days in submitting the remarks. It is the further contention of the petitioner that the



remarks were received on 30.07.2021 and there was a delay of 1 day in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise Department after the Deputy Secretary dealt with it. Hence, there was inordinate delay of 8 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.

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 7 days in submitting the remarks by the Detaining Authority and unexplained delay of 1 day 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.

In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.39/Goonda/Salem City/2021 dated 05.07.2021 passed by the second respondent is set aside. The detenu, viz., Omsingh s/o.Habatsingh, aged 28 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Linemedu, Salem - 636 006.
3. The Inspector of Police,
Shevapet Police Station,
Shevapet Main Road,
Salem - 636 002.
4. The Superintendent of Prisons,
Office of the Superintendent of Prisons,
Central Prison, Salem.
5. The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Vikram Kumar, Advocate, S.R.No.1359

H.C.P.No.1311 of 2021

NMI [co]
NSK 11/01/2022