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H.C.P.No.1269 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18..11..2022

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

Habeas Corpus Petition No.1269 of 2022

Nasreen W/o Jaila Jailabudeen

..... Petitioner

-Versus-

- 1.State of Tamil Nadu,
Rep. by the Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 600 009.
- 2.The Commissioner of Police,
Tambaram City,
O/o The Commissioner of Police (Goondas Section),
Sholinganallur, Chennai 600119.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai District.
- 4.The Inspector of Police,
J-10, Chemmanchery Police Station,
Chennai District.

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a
Writ of Habeas Corpus calling for the records relating to the detention order



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vide Memo BCDFGIISSSV.No.28/2022 dated 24.03.2022 passed by the second respondent and quash the same and consequentially direct the respondents herein to produce the petitioner's husband namely Jaila @ Jailabudeen, aged 26 years, S/o. Moideen Basha (who is presently under going detention in the Central Prison Puzhal Chennai) before this Court and set him at liberty .

For Petitioner : Mr.S.N.Arunkumar

*For Respondents : Mr.R.Muniyapparaj,
Additional Public Prosecutor*

ORDER

The petitioner is the wife of the detenu viz., Jaila @ Jailabudeen Son of Moideen Basha. The detenu has been detained by the second respondent by his order in BCDFGIISSSV.No.28/2022 dated 24.03.2022. holding him 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.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We



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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 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 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 24.03.2022. A



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representation was made on behalf of the detenu on 25.06.2022. Thereafter, remarks were called for by the Government from the Detaining Authority and the remarks were received. Thereafter, the Government considered the matter and passed the order rejecting the representation on 14.07.2022.

6. It is the contention of the petitioner that there was a delay of 15 days in considering the representation by the Detaining Authority, of which, 4 days were Government Holidays and hence there was an inordinate delay of 11 days in submitting the remarks.

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**



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(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 11 days in considering the representation by the Detaining Authority. 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 BCDFGISSSV.No.28/2022 dated 24.03.2022, passed by the second respondent is set aside. The detenu, viz., Jaila @ Jailabudeen, Son of Moideen Basha, is directed to be released forthwith unless his detention is



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required in connection with any other case.

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(P.N.P., J.) (TKR., J.)
18..11..2022

Index: Yes/No
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To

- 1.The Secretary,
Home, Prohibition and Excise Department,
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- 2.The Commissioner of Police,
Tambaram City,
O/o The Commissioner of Police (Goondas Section),
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- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai District.
- 4.The Inspector of Police,
J-10, Chemmanchery Police Station,
Chennai District.
- 5.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai – 9.
- 6.The Public Prosecutor,
High Court, Madras.



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