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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2022

Coram

The Honourable Mr. Justice P.N.PRAKASH  
and  
The Honourable Mr. Justice A.A.NAKKIRAN

H.C.P.No.1528 of 2021

Kala

.. Petitioner

Vs.

1. State of Tamil Nadu represented by  
The Secretary of Government,  
Home, Prohibition and Excise Department,  
Fort St.George,  
Chennai-600 009.

2. The Commissioner of Police,  
Salem City.

3. The Superintendent,  
Central Prison,  
Salem-636 007.

4. The Inspector of Police,  
Fairlands Police Station,  
Salem City,  
Salem District.  
(Crime No.299/2021)

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the entire records leading to the detention of the petitioner's son, the detenu Rajkumar, aged 24 years, son of Nagamaiyen, presently detained in the Central Prison, Salem, under Act 14/1982 as "Goonda" vide the detention order dated 07.09.2021 in C.M.P.No.71/Immoral Traffic Offender/Salem City/2021, on the file of the 2<sup>nd</sup> respondent herein, directing to produce the person or body of the detenu Rajkumar, aged 24 years, son of Nagamaiyan, before this Court and thereafter set him at liberty from the Central Prison, Salem, by setting aside the above order.

For Petitioner : Mr.C.Emilias  
for Mr.M.T.Arunan

For Respondents : Mr.M.Babu Muthumeeran  
Addl. Public Prosecutor



ORDER  
[Made by P.N.PRAKASH, J.]

The petitioner is the mother of the detenu Rajkumar, aged 24 years, son of Nagamaiyan. The detenu has been detained by the second respondent by his order in C.M.P.No.71/I.T.O/Salem City/2021 dated 07.09.2021, holding him to be a "Immoral Traffic Offender", as contemplated under Section 2(g) 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 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 07.09.2021. The petitioner made a representation on 16.09.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 29.09.2021. The remarks were duly received on 11.10.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 29.10.2021.

6. It is the contention of the petitioner that there was a delay of 12 days in submitting the remarks by the Detaining Authority, of which, 4 days were Government Holidays and hence there was an inordinate delay of 8 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 11.10.2021 and there was a delay of 4 days in considering the



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representation by the Hon'ble Minister for Home, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, 2 days were Government Holidays, hence, there was an inordinate delay of 2 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 8 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, 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.71/I.T.O/Salem City/2021 dated 07.09.2021, passed by the second respondent is set aside. The detenu, viz., Rajkumar, aged 24 years, son of Nagamaiyan, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nsd



To

1. The Secretary of Government,  
Home, Prohibition and Excise Department,  
Fort St.George,  
Chennai-600 009.
2. The Commissioner of Police,  
Salem City.
3. The Superintendent,  
Central Prison,  
Salem-636 007.
4. The Inspector of Police,  
Fairlands Police Station,  
Salem City,  
Salem 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.

+1cc to Mr.M.T.Arunan, Advocate, S.R.No.15283

H.C.P.No.1528 of 2021

SPD(CO)  
CT 15/03/2022