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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2022

Coram

The Honourable Mr. Justice P.N.PRAKASH
and

The Honourable Mr. Justice A.A.NAKKIRAN

H.C.P.No.1602 of 2021

B.Nargis Banu

...Petitioner/Wife of the Detenu

Vs.

1.State of Tamil Nadu represented by

The Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner of Police,
Salem City,
Salem.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus call for the records pertaining to the detention order in C.M.P.No.78/I.T.O/SALEM CITY/2021 dated 09.09.2021 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Babu @ Syed Hussain, aged about 36 years, S/o.Galeel, the detenu, now confined in the Central Prison, Salem, before this Court and and set the petitioner's husband Babu @ Syed Hussain, aged about 36 years, S/o.Galeel, the detenu herein, at liberty.

For Petitioner : Mr.R.Chakkaravarthy

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

ORDER

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

The petitioner is the wife of the detenu Babu @ Syed Hussain, aged about 36 years, S/o.Galeel. The detenu has been detained by the second respondent by his order in



C.M.P.No.78/I.T.O/SALEM CITY/2021 dated 09.09.2021, 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.

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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 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 09.09.2021. The petitioner made a representation on 24.09.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 27.09.2021. The remarks were duly received on 07.10.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 28.10.2021.

6. It is the contention of the petitioner that there was a delay of 9 days in submitting the remarks by the Detaining Authority, of which, 2 days were Government Holiday 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 07.10.2021 and there was a delay of 5 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, 2 days were Government Holidays, hence, there was an inordinate delay of 3 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 3 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.78/I.T.O/SALEM CITY/2021 dated 09.09.2021, passed by the second respondent is set aside. The detenu, viz., Babu @ Syed Hussain, aged about 36 years, S/o.Galeel, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nsd



To

1.The Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner of Police,
Salem City,
Salem.

3.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.

4. The Superintendent
Central Prison, Salem

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1602 of 2021

GPL (CO)
SP (29/03/2022)