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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2022

Coram

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

H.C.P.No.1834 of 2021

E.Siyamala ... Petitioner/Mother of the decree

Vs.

- 1.Government of Tamil Nadu represented by
The Principal Secretary,
Home, Prohibition and Excise
(XVI) Department,
Fort St.George,
Chennai-600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Inspector of Police,
Central Crime Branch II,
Chennai.
- 4.The Superintendent,
Central Prison,
Puzhal,
Chennai - 600 066.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records in detention order in No.313/BCDFGISSSV/2021 dated 12.10.2021 on the file of the 2nd respondent herein and quash the same and direct the respondents herein to produce the body of the petitioner's son Inbamathivathanan, aged 36 years, son of Esuraja, now confined in the Central Prison, Puzhal, before this Court and set him at liberty.



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For Petitioner : Mr.N.R.Elango, Senior
Counsel
for Mr.Jerald C.Tennyson
For Respondents : Mr.M.Babu Muthumeeran
Addl. Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu Inbamathivathanan, aged 36 years, son of Esuraja. The detenu has been detained by the second respondent by his order in No.313/BCDFGISSSV/2021 dated 12.10.2021, 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 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 12.10.2021. The petitioner made a representation on 29.10.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 02.11.2021. The remarks were duly received on 17.11.2021. Thereafter, the Government considered



6. It is the contention of the petitioner that there was a delay of 15 days in submitting the remarks by the Detaining Authority, of which, 5 days were Government Holidays and hence there was an inordinate delay of 10 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 17.11.2021 and there was a delay of 13 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 9 days in considering the representation.

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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 10 days in submitting the remarks by the Detaining Authority and unexplained delay of 9 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.

<https://hcservices.ecourts.gov.in/hcservices/>



Inbamathivathanan, aged 36 years, son of Esuraja, is directed to be released forthwith unless his detention is required in connection with any other case.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nsd
To

1. The Principal Secretary,
Home, Prohibition and Excise
(XVI) Department,
Fort St.George,
Chennai-600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Inspector of Police,
Central Crime Branch II,
Chennai.
- 4.The Superintendent,
Central Prison,
Puzhal,
Chennai - 600 066.
- 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.Jerold C.Tennyson, Advocate Sr.29932

H.C.P.No.1834 of 2021

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srg 02/05/2022