



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.04.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Mr.JUSTICE A.A.NAKKIRAN

H.C.P.No.1880 of 2021

E.Juliet

...Petitioner

Vs.

1.The Government of Tamil Nadu
Rep. by its Principal Secretary
Home, Prohibition & Excise (XVI) Department
Fort St. George, Chennai-9

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, praying to issue a WRIT OF HABEAS CORPUS calling for the record memo No. 314/BCDFGISSSV/2021 dated 12.10.2021 on the file of the 2nd respondent and quash the same and direct the respondents to produce the body of the petitioner's son viz., David Wallles, aged 27 years, S/o.Israel, now confined in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.N.R.Elango
Senior Counsel
for Mr.Jerald C Tennyson

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



O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner is the mother of the detenu viz., David Waller, aged 27 years, S/o.Israel. The detenu has been detained by the 2nd respondent by his order dated 12.10.2021 in 314/BCDFGISSSV/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 submitted 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 dated 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 20.11.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 02.12.2021.

6. It is the contention of the petitioner that there was a delay of 18 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holidays and hence, there was an inordinate delay of 12 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 20.11.2021 and there was a delay of 12 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the



Deputy Secretary dealt with it, of which 4 days were Government Holidays, 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 Hon'ble 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 Hon'ble 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 12 days in submitting the remarks by the Detaining Authority and unexplained delay of 8 days in considering the representation by the Hon'ble Minister for Electricity, 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 No.314/BCDFGISSSV/2021 dated 12.10.2021, passed by the 2nd respondent is set aside. The detenu viz., David Wallis, aged 27 years, S/o.Israel, 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



To

1.The Principal Secretary
Home, Prohibition & Excise (XVI) Department
Fort St. George, Chennai-9

2.The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai-9

3.The Commissioner of Police
Greater Chennai

4.The Inspector of Police
Central Crime Branch-II
Chennai

5.The Superintendent
Central Prison
Puzhal, Chennai 600 066

6.The Public Prosecutor
High Court, Madras

H.C.P.No.1880 of 2021

JPL(CO)
SP(26/04/2022)