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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2022

Coram:

The Honourable Mr. Justice S.VAIDYANATHAN
and
The Honourable Mr. Justice A.D.JAGADISH CHANDRA

H.C.P.No.2037 of 2021

Durga

.. Petitioner/Mother of the Detenue

Vs.

1. The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government Home,
Prohibition and excise Department,
Chennai - 600 009.
2. The District Magistrate
and District Collector,
Tiruvallur District, Tiruvallur.
3. The Superintendent of Police,
Tiruvallur District, Tiruvallur.
4. State represented by
The Inspector of Police,
Sholavaram Police Station,
Tiruvallur District.
5. The Superintendent of Police,
Central Prison - II,
Puzhal, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records relating to the detention order dated on 04.09.2021 made in detention order Memo No.BCDFGISSSV/104/2021 passed by the second respondent herein quash the same and direct the respondents to produce the body or person of the petitioners son, Ganesh S/o. Sampath, male aged about 25 years branded as Goondas and now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty forth.



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For Petitioner : Mr. P.Sundara Rajan
For Respondents : Mr. E.Raj Thilak
Additional Public
Prosecutor

ORDER

S.VAIDYANATHAN, J.,
and
A .D.JAGADISH CHANDRA, J.,

The petitioner is the mother of the detenu Ganesh, male, aged 25 son of Sampath. The detenu has been detained by the second respondent by his order in Memo No.BCDFGISSSV/104/2021 dated 04.09.2021, 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 opposed the Habeas Corpus Petition. 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 04.09.2021. The petitioner made a representation on 24.11.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 29.11.2021. The remarks were duly received on 20.12.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.01.2022.



6. It is the contention of the petitioner that there was a delay of 24 days in submitting the remarks by the Detaining Authority, of which 7 days were Government Holiday and hence there was an inordinate delay of 17 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 20.12.2021 and there was a delay of 15 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise (XI) Department after the Deputy Secretary dealt with it, of which 4 days were Government Holidays, hence, there was inordinate delay of 11 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 17 days in submitting the remarks by the Detaining Authority and unexplained delay of 11 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise (XI) 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 Memo No.BCDFGISSSV/104/2021 dated 04.09.2021, passed by the second respondent is set aside. The detenu, viz., Ganesh, male, aged 25 son of Sampath, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



bkn

Note to Office: Issue order copy by 17.06.2022.

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To

1. The Additional Chief Secretary to Government Home,
Prohibition and excise Department,
Chennai - 600 009.

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

3. The District Magistrate
and District Collector,
Tiruvallur District, Tiruvallur.

4. The Superintendent of Police,
Tiruvallur District, Tiruvallur.

5. The Inspector of Police,
Sholavaram Police Station,
Tiruvallur District.

6. The Superintendent of Police,
Central Prison - II,
Puzhal, Chennai.

7. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2037 of 2021

AJS (CO)
A.SK(17/06/2022)