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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2022

Coram:

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

H.C.P.No.2003 of 2021

Monushree

.. Petitioner

Vs.

1. The Secretary to the Government,
Government of Tamil Nadu (Home),
Prohibition and Exise Dept.,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Commissioner of Police,
Greater Chennai,
Veppery,
Chennai - 600 007.

3. The Inspector of Police,
Central Crime Branch - II,
Chennai.

4. The Superintendent of Prison,
Central Prison,
Puzhal,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records connected with the order of the second respondent herein in Memo No.331/ BCDGIISSSV/2021, dated 03.11.2021 passed against the petitioner's husband the detainee namely Iniyavan son of Yesu Raja, aged about 32 years, who is confined at Central Prison, Puzhal and set aside the same, consequently, directed the respondents herein to produce the body and person of the detainee before this Court and set him at liberty forthwith.

For Petitioner : Mr. A.Murugavel

For Respondents : Mr. E.Raj Thilak
Additional Public Prosecutor



ORDER

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

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The petitioner is the wife of the detenu Iniyavan aged about 32 years, son of Yeasu Raja. The detenu has been detained by the second respondent by his order in Memo No.331/BCDFGISSSV/2021, dated 03.11.2021, 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 in time and there was an inordinate and unexplained delay. The learned counsel for the petitioner further submitted that the legible copy of the remand order has not been supplied to the detenu in the language known to the detenu. Further the Habeas Corpus Petitions filed by the co-detenu in H.C.P. Nos.1834 & 880 of 2021 were allowed on 25.04.2021 and 28.04.2021. Therefore, on these grounds, the detention order is liable to be quashed.

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 03.11.2021. The petitioner made a representation on 25.11.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 01.12.2021. The remarks were duly received on 13.12.2021. 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 13 days in submitting the remarks by the Detaining Authority, of which 4 days were Government Holiday and hence there was an inordinate delay of 9 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 13.12.2021 and there was a delay of 22 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 5 days were Government Holidays, hence, there was inordinate delay of 17 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 9 days in submitting the remarks by the Detaining Authority and unexplained delay of 17 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 Memo No.331/BCDFGISSSV/2021, dated 03.11.2021, passed by the second respondent is set aside. The detenu, viz., S.Iniyavan, aged about 32 years, son of Yeasu Raja, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar



1. The Secretary to the Government,
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2. The Commissioner of Police,
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3. The Inspector of Police,
Central Crime Branch - II,
Chennai.
4. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.
5. The Public Prosecutor,
High Court, Madras.
6. The Joint Secretary to Government,
Public (law & Order), Secretariat,
Chennai 9.

H.C.P.No.2003 of 2021

RK(CO)
GN(13/06/2022)