



H.C.P.No.2134 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2022

Coram

The Honourable Mr. Justice **PARESH UPADHYAY**
and
The Honourable Mr. Justice **A.D.JAGADISH CHANDIRA**

H.C.P.No.2134 of 2021

Tamina

.. Petitioner

Vs

- 1.State represented by
The Chief Secretary,
Secretariat, Chennai – 600 009.
- 2.The Additional Chief Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 3.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section),
Vepery, Chennai – 600 007.
- 4.The Superintendent of Prison,
Central Jail, Puzhal,
Chennai – 600 066.
- 5.The Inspector of Police,
Team 12, Bank Fraud Investigation Wing,
Central Crime Branch,
Vepery, Chennai.

.. Respondents



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Petition filed under Article 226 of the Constitution of India to

issue a writ of Habeas Corpus to call for the records in detention order No.357/BCDFGISSSV/2021 dated 28.11.2021 passed by 3rd respondent herein and set aside the same as illegal and direct the respondents to produce the body of the petitioner's husband Nazeemudeen, S/o.Kamaludeen, aged 28 years, who is now detained in the Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.G.Muthukumar

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

ORDER

PARESH UPADHYAY, J.
and
A.D.JAGADISH CHANDIRA, J.

The petitioner is the wife of the detenu Nazeemudeen, S/o.Kamaludeen, aged 28 years. The detenu has been detained by the third respondent by his order in Memo No.357/BCDFGISSSV/2021, dated 28.11.2021, 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.



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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 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 on behalf of the petitioner was not considered in 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.



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5. The Detention Order in question was passed on 28.11.2021. A representation was made on behalf of the petitioner on 10.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.12.2021. The remarks were duly received on 17.12.2021. Thereafter, the Government considered the matter and passed the order rejecting the representation on 03.01.2022.

6. It is the contention of the petitioner that there was a delay of 2 days in submitting the remarks by the Detaining Authority, of which, there was no Government Holiday and hence there was an inordinate delay of 2 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 17.12.2021 and there was a delay of 17 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, 6 days were Government Holidays, hence, there was an inordinate delay of 11 days in considering the representation.



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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 2 days in submitting the remarks by the Detaining Authority and unexplained delay of 11 days in considering



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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 Memo No.357/BCDFGISSSV/2021, dated 28.11.2021, passed by the third respondent is set aside. The detenu, viz., Nazeemudeen, S/o.Kamaludeen, aged 28 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(P.U., J.) (A.D.J.C., J.)
20.06.2022

Index: Yes/No
nsd/35



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To

- 1.The Chief Secretary,
Secretariat, Chennai – 600 009.
- 2.The Additional Chief Secretary,
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Secretariat,
Chennai-600 009.
- 3.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section),
Vepery, Chennai – 600 007.
- 4.The Superintendent of Prison,
Central Jail, Puzhal,
Chennai – 600 066.
- 5.The Inspector of Police,
Team 12, Bank Fraud Investigation Wing,
Central Crime Branch,
Vepery, Chennai.
- 6.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai – 9.
- 7.The Public Prosecutor,
High Court, Madras.



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PARESH UPADHYAY, J.
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